

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAIWAMY

W.P. No.28684 of 2018

B.Kesavan

.. Petitioner

v.

1. The Authorized Officer
Canara Bank, Saidapet Branch
Anna Salai, Saidapet
Chennai - 600 015

2. Kelvin

3. Suganthi Kelvin

4. Bhuvaneswari

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus directing the 1st and 4th respondents to remove the seal and lock and allow the petitioner to reside in the same premises on the petitioner's undertaking to hand over the possession within 6 months.

For Petitioner : Mr.S.N.Amarnath

For Respondents : Mr.M.L.Ganesh - for R1
Not ready in Notice - R2 to R4

O R D E R

(Order of the Court made by M.DURAIWAMY,J.)

The petitioner has filed the above writ petition to issue a Writ of Mandamus directing the respondents 1 and 4 to remove the seal and lock and allow him to reside in the same premises on his undertaking to hand over the possession within six months.

2. It is the case of the petitioner that the 1st respondent bank initiated proceedings against the respondents 2 and 3 under the SARFAESI Act and in an application filed under section 14 of the SARFAESI Act, the Chief Metropolitan Magistrate had ordered for taking possession of the property from the respondents 2 and 3. Further, it is the case of the petitioner that he is a tenant under the respondents 2 and 3 and without issuing any notice to him, the order has been passed by the Chief Metropolitan Magistrate for taking

possession of the property.

3. The petitioner relied upon an unregistered lease agreement dated 28.11.2013 executed for a period of three years.

4. It is settled position that under section 17 of the Registration Act, a document of lease agreement for a period of more than one year must be registered. In such circumstances, the lease agreement, relied upon by the petitioner, cannot be accepted.

5. It is not in dispute that the 1st respondent bank had taken physical possession of the property and sealed the premises on 24.10.2018.

6. The learned counsel appearing for the petitioner submitted that the petitioner's movables are kept inside the premises and therefore, he should be allowed to remove the movables from the premises.

7. Countering the submissions made by the learned counsel appearing for the petitioner, the learned counsel appearing for the 1st respondent-bank submitted that after taking physical possession of the property and sealing and locking the same, the petitioner, with the assistance of some henchmen, broke open the seal and lock and entered the premises. The learned counsel further submitted that a complaint has also been registered in this regard.

8. The learned counsel appearing for the 1st respondent-bank also shown us some of the photographs before us wherein the seal and lock were removed. When the petitioner has not established his possession over the property, no indulgence can be shown to the petitioner in any manner whatsoever. That apart, possession of the petitioner can be established only by adducing evidence. Mere production of an unregistered agreement for a period of three years cannot be accepted for proving the possession of the petitioner.

9. In these circumstances, we find no merits in the Writ Petition. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

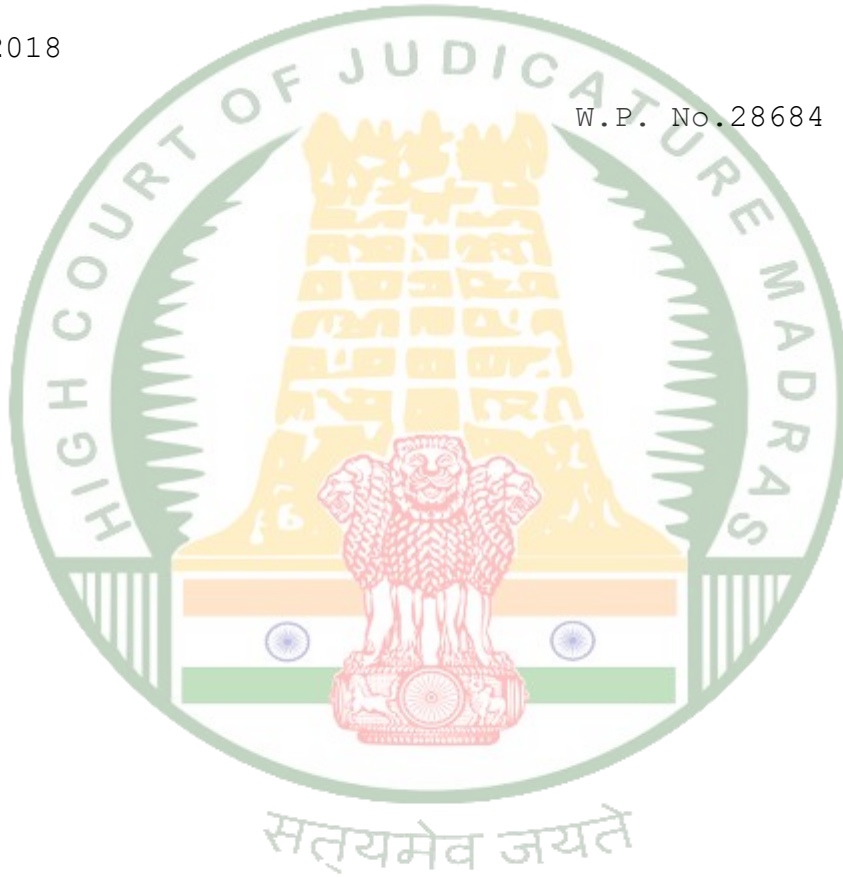
Rj

To
The Authorized Officer
Canara Bank, Saidapet Branch
Anna Salai, Saidapet
Chennai - 600 015

+lcc to Mr.S.No.Amarnath, Advocate SR.NO.75173
+lcc to M/s.M.L.Ganesh, Advocate SR.NO.74975

RJI (CO)
sm:19.11.2018

W.P. No.28684 of 2018



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