IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.11.2018

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.27265 of 2018

S.Sivakumar ... Petitioner

Vs.

The Copyist Superintendent,
The Chief Metropolitan Magistrate Court,
Egmore at Allikulam,
Chennai - 600 003. ...Respondent

Prayer: Criminal Original petition filed under Section 482 of the Criminal Procedure Code, to direct the respondent to furnish the certified copies of documents, authorization letter (Document No.1), Possession Notice dated 08.09.2016 (Document No.14), Acknowledgment Card (Document No.15) alleged to prove the receipt of possession notice, Paper Publication (Document No.16) and Statement of Accounts (Document No.18) filed in Crl.M.P.No.3957 of 2017, to the petitioner.

For Petitioner : Mr.B.Ram Prasath

For Respondent : Mr. M.Mohamed Riyaz
Additional Public Prosecutor

O R D E R

This petition has been filed seeking for a direction to the Court below to furnish copies of certain documents, which have been sought for by the petitioner.

2. The learned counsel for the petitioner would submit that the proceedings were initiated against the petitioner under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act). In the course of proceedings, the concerned Bank had approached the learned Chief Metropolitan Magistrate Court, Egmore, under Section 14 of the said Act, for taking possession of the secured assets. The concerned Court, after satisfying itself that the entire procedure has been fulfilled, passed an order dated 17.01.2018, appointing an Advocate Commissioner to take

possession of the property. The learned counsel specifically pointed out to Paragraph No.3 of the order and the same is extracted hereunder.

> "3. The authorized officer of the petitioner / financial institution has filed his proof affidavit in support of his petition confirming the measures taken by the petitioner before filing this petition. He has produced the copies of documents viz., Authorization letter, Letter of Sanction, Composite agreement, General form of guarantee, Memorandum of Deposit of Title deeds, demand promissory note, demand notice, possession notice, photographs for affixture, acknowledgment cards, paper publications and statement of account etc., with the petition, to prove that he has taken all the measures as enumerated in Section 13 of the Act."

3. The learned counsel would submit that since there is specific reference in the order as to the receipt of various documents that were filed by the Bank, the petitioner filed an application before the Court below seeking for four documents that were filed by the concerned Bank. This copy application has been returned by Registry of the learned Chief Metropolitan Magistrate, Egmore, on the ground that the documents have not been marked as exhibits. The grievance of the petitioner is that even though the documents were not marked as exhibits, those documents have been relied upon by the Court below at the time of passing the order under Section 14 of the SARFAESI Act. Therefore, the petitioner is entitled for certified copy of those documents. In this regard, the learned counsel for the petitioner relied upon the Judgment of this Court reported in D.Iruthayaraj vs. Copyist superintendent (2015) 2 MLJ (Crl) Mad 339.

4. This Court, while considering the facts of that case, had passed the following order in Paragraph Nos.2 and 3, which are extracted hereunder:

> "2. It is submitted by the learned counsel for the petitioner that the petitioner sought for certified documents which were filed by CITI Bank before the learned Chief Metropolitan Magistrate, Egmore, Chennai in Crl.M.P.No.3626/2010 and the learned Chief Metropolitan Magistrate did not pass any order in the petition filed by the petitioner and therefore, this petition is filed. He further submitted that after filing of the petition before this Court, copy application was filed by the petitioner in C.A.No.4075 of 2014 in Crl.M.P.No.3626 of 2010 and it was returned by

the learned Chief Metropolitan Magistrate with remarks that SI.No.1 may be granted and documents mentioned in SI.Nos.2 to 6 cannot be given. He therefore submitted that the petitioner only sought for certified copies of the documents furnished in Crl.M.P.No.3626 of 2010 for the purpose of proceedings against the bank for having filed forged documents before the Court by playing fraud and therefore, prays that suitable direction may be given to the learned Chief Metropolitan Magistrate, Egmore, Chennai to give copies of those documents.

3. .... If the documents were filed in Crl.M.P.No.3636/2010, the petitioner, being a opposite party in that petition, is entitled to get certified copies of those documents filed in that petition and there is no question of eligibility in applying for copies. Further it is seen from the description of documents mentioned in C.A.No.4075/2014 that

the petitioner asked for certified copies of sale deed, statutory notice issued under Section 13(2) of the SARFAESI Act, demand notice published by the bank by way of advertisement, loan agreement and documents and the petition filed under Section 14 of the SARFAESI Act. In my opinion, there is no impediment in granting certified copies of those documents."

5. By relying upon the above said Judgment, the learned counsel would submit that if the documents have been filed by the concerned Bank, then the petitioner is entitled for certified copy of those documents and the same cannot be denied by the Court below.

6. It is seen from the records that the Registry of the Court below has returned the copy application on the ground that the documents have not been marked as exhibits. In the proceedings under Section 14 of the SARFAESI Act, the concerned Court only satisfies itself as to whether the Bank has fulfilled the requirements under Section 13 of SARFAESI Act and thereafter, the Court passes an order under Section 14 for taking possession. In fact, the Court does not even hear the borrower or the guarantor before passing the order. There is no practice of marking documents in proceedings under Section 14 of the SARFAESI Act. Therefore the Court below cannot say that the certified copy of the documents will not be given, since it has not been marked.

7. The Judgment cited by the learned counsel for the petitioner specifically states that the borrower is entitled for the certified copy of the documents filed before the concerned Magistrate Court. Therefore, whether the documents have been marked or not, if the same have been filed in the course of the proceedings, then the petitioner will be entitled for certified copy of the same. In all cases where copy application is being made by a borrower or guarantor and the Court finds that the documents have been filed during the course of proceedings under Section 14, Courts shall give a certified copy of those documents and the same shall not be denied on the ground that they have not been marked.

8. In view of the above, the petitioner is given liberty to re-present the copy application and if the Court below finds that the documents relied upon by the Bank have in fact been filed before the Court, while proceedings were pending in Crl.M.P.No.3795 of 2017, the Court below shall give certified copy of those documents to the petitioner. Court below shall not deny the same on the ground that those documents were not marked.

9. With the above direction, the Criminal Original Petition stands disposed of.

nmm/dss

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1. The Chief Metropolitan Magistrate,
   Egmore, Chennai.

2. The Copyist Superintendent,
   The Chief Metropolitan Magistrate Court,
   Egmore at Allikulam,
   Chennai - 600 003.

3. The Public Prosecutor,
   Madras High Court, Chennai.

+2cc to Mr.B.Ram Prasath, Advocate, S.R.No.80017

Crl.O.P.No.27265 of 2018

SR(CO)
KAK(19/12/2018)