

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.10701 of 2019 and
W.M.P.Nos.11182 & 11183 of 2019

R.Tamilarasan

.. Petitioner

-Vs-

1. The Honourable Chief Metropolitan Magistrate
Allikulam complex, Chennai 600 003.

2 Indiabulls Housing Finance Ltd.
Rep. by its Power of Attorney, Mr.Prathik
No.20, Apex Chamber, 3rd Floor
Sir Thiyagaraya Road, T.Nagar
Chennai 600 017.

3 Hydromax Technologies Pvt. Ltd.
No.55 Ground Floor, Indira Gandhi Street
Kaveri Rangan Nagar, Saligramam
Chennai 600 093.

4 Mr.Ganesh

5 Mrs.R.Swarnalakshmi

6 Mr.Gopalakrishnan @ K.R.Gopalakrishnan

7 Mrs.Jayalakshmi Shanmugam @ Leela

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to an order made in CrI.M.P.No.618 of 2018 on the file of Honourable Chief Metropolitan Magistrate at Allikulam, Chennai 600 003, dated 11.07.2018, quash the same and directing the respondents 2 to 7 refrain from evicting the petitioner and his family from the Second Floor of Door No.4/7 6th Street Saidapet Chennai 600 015 on the basis of the said

impugned order without following procedure laid down for eviction of tenant under the Tamil Nadu Regulations of Rights and Responsibilities of Landlords and Tenants Act 2017.

For Petitioner : Mr.P.Murali

For Respondents: Mr.V.Vijay Shankar - for R1
Mr.T.Saikrishnan - for R2

O R D E R

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

The petitioner has filed the above Writ Petition to issue a Writ of Certiorarified Mandamus to call for the records relating to the order dated 11.07.2018 made in Crl.M.P.No.618 of 2018 on the file of the 1st respondent, to quash the same and direct the respondents 2 to 7 to refrain from evicting the petitioner and his family from the Second Floor of Door No.4/7 6th Street Saidapet Chennai - 600 015 on the basis of the said impugned order without following procedure laid down for eviction of tenant under the Tamil Nadu Regulations of Rights and Responsibilities of Landlords and Tenants Act 2017.

2. The petitioner has challenged the order passed by the 1st respondent in Crl.M.P.No.618 of 2018 filed under Section 14 of the SARFAESI Act.

3. According to the petitioner, he is a tenant in respect of the property in dispute and therefore, the order passed by the 1st respondent is liable to be set aside.

4. As per Section 17 (4-A) of the SARFAESI Act, the tenant has got remedy by way of an appeal as against the order passed by the 1st respondent. The petitioner without exhausting the alternate and efficacious remedy available to him under Section 17 (4-A) of the SARFAESI Act, has filed the Writ Petition.

5.1. The Hon'ble Supreme Court of India, in the judgments reported in 2018 (3) Supreme Court Cases 85 [Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.], and 2018 (1) Supreme Court Cases 626 [Agarwal Tracom Private Limited Vs. Punjab National Bank and others] held that the aggrieved parties cannot challenge the SARFAESI proceedings directly by filing a Writ Petition under Article 226 of the Constitution of India without exhausting the appeal remedy available to them.

5.2 In a recent decision of the Supreme Court dated 05.10.2018 in ICICI Bank Limited v. Umakanta Mohapatra, Civil Appeal Nos.10251 - 10265 of 2018 arising out of SLP (C) Nos.16758 - 16772 of 2015, the Supreme Court has referred to the decision in Authorized Officer, State Bank of Travancore and Anr. vs. Mathew K.C., (2018) 3 SCC 85, and has observed that despite several judgments, including the decision of Mathew K.C., supra, the High Courts continue to entertain matters which arise under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI') and keep granting interim orders in favour of persons who are Non-Performing Assets. Further, the Apex Court held that Writ Petition filed by the aggrieved party without exhausting the statutory remedy available under the SARFAESI Act and Recovery of Debts Due to Banks and Financial Institutions Act, is not maintainable.

6. The ratio laid down by the Hon'ble Apex Court in the above referred judgments is applicable to the present case.

5. Since the petitioner has filed the Writ Petition without exhausting the alternate remedy available to him under the SARFAESI Act, we are not inclined to entertain the Writ Petition. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Rj

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Chief Metropolitan Magistrate
Allikulam Complex, Chennai 600 003.

+2CCs to Mr.P.Murali, Advocate, SR.No.35624
+1cc to Mr.T.Saikrishnan, Advocate, SR.No.36496

W.P. No.10701 of 2019
and

W.M.P.Nos.11182 & 11183 of 2019

Kak (29/05/2019)