

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.NO.910 OF 2019
AND
CMP.NO.19360 OF 2019

R.Sundararajan

..Appellant/
Appellant/Plaintiff

Vs.

1. Hong Kong & Shanghai Banking Corporation Ltd.,
Rep. by its Vice President - Debt Management,
No.30, Rajaji Salai,
Chennai - 600 001.

2. N.Senthilkumar

..Respondents

Prayer:

Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 03.01.2019 passed by XVII Additional Judge, City Civil Court, Chennai in A.S.No.77 of 2017 and confirming the judgment and decree dated 04.03.2017 in O.S.No.929 of 2016 on the file of IV Assistant City Civil Court, Chennai.

For Appellant : Mr.T.Velumani

J U D G M E N T

सत्यमेव जयते

The plaintiff in O.S.No.929 of 2016 whose suit for permanent injunction was rejected under Order VII Rule 11(d) of the Code of Civil Procedure on the ground that it is barred under Section 34 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [SARFAESI Act] has come up with this Second Appeal.

2. According to the plaintiff, he had entered into an arrangement termed as lease agreement by which he had paid a sum of Rs.13,00,000/- to the 1st defendant on an understating that he would occupy the property till the 1st defendant repaid the sum

of Rs.13,00,000/- in lieu of the interest. Claiming that the 2nd defendant Bank attempted to interfere with his possession, the plaintiff has come forward with the above suit.

3. The arrangement between the plaintiff and the 1st defendant is dated 17.02.2014. The 2nd defendant filed an application in IA.No.8987 of 2016 seeking to reject the plaint on the ground that it is barred under Section 34 of the SARFAESI Act. According to the 2nd defendant, the 1st defendant, the borrower had defaulted in payment of loan and a possession notice was issued under Section 13(4) of the SARFEASI Act as early as on 14.11.2013 and it is thereafter the plaintiff claims to have entered into an agreement dated 17.02.2014, pursuant to which he claims to be in possession of the property. The 1st defendant also contended that the suit is barred in view of the provisions of Section 34 of the SARFAESI Act.

4. The trial court concluded that the suit is barred under Section 34 of the SARFAESI Act since it is open to the plaintiff to move the Debt Recovery Tribunal. The lower appellate court affirmed the findings of the trial court and the lower appellate court also found that in terms of the judgment of the Hon'ble Supreme Court in Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Limited and others reported in (2014) 6 SCC Page 1, the plaintiff having been put in possession after the issuance of the possession notice under Section 13(4) of the SARFEASI Act is not entitled to any right under the agreement dated 17.02.2014. Aggrieved by the same the plaintiff has come forward with this Second Appeal.

5. I have heard Mr.T.Velumani, learned counsel appearing for he appellatant.

6. Mr.T.Velumani would vehemently contend that no doubt true the plaintiff had come into possession on 17.02.2014 under the document styled as lease agreement, but he cannot be dispossessed illegally. According to him, in the proceedings taken under Section 14(3) of the SARFEASI Act before the District Magistrate, he should be made a party and he should be heard by the District Magistrate before he is dispossessed.

7. I am unable to agree with the said contention of the counsel. In fact the Hon'ble Supreme Court had in Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Limited and others reported in (2014) 6 SCC Page 1 specifically laid down that a person who comes into possession after possession notice, is not entitled to be recognised as a person in legal possession. Therefore, being a trespasser the plaintiff cannot claim even limited protection as claimed by the counsel.

8. I do not find any error of law or a substantial question of law so as to enable me to entertain the appeal. Hence, the Second Appeal is dismissed without being admitted. No costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar
dsa

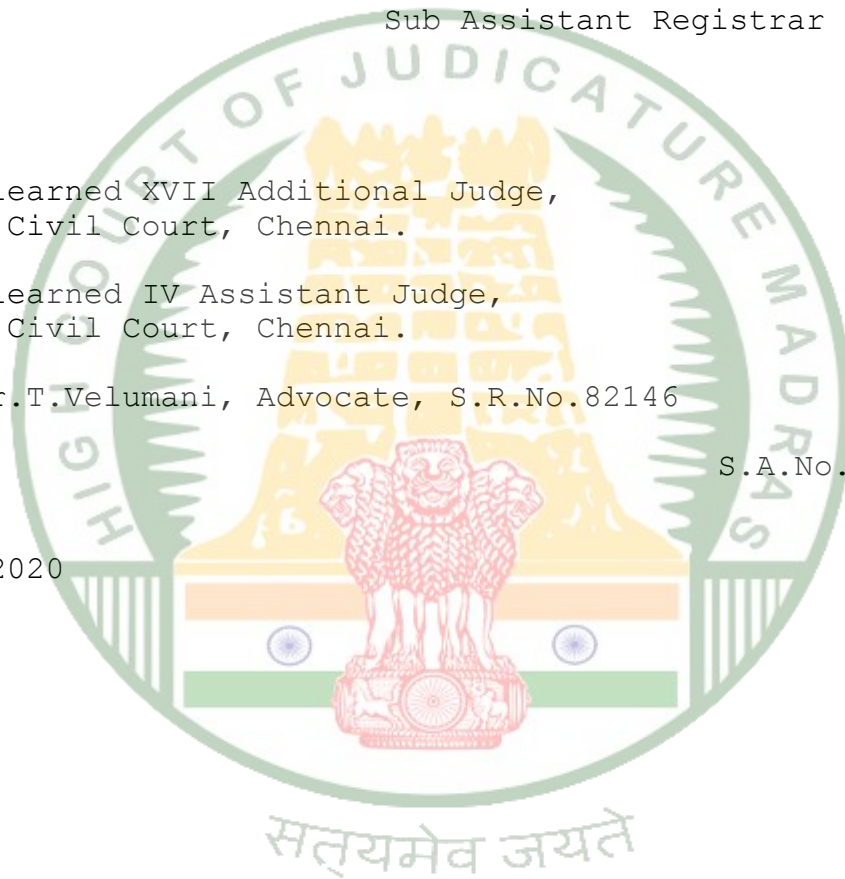
To

1. The learned XVII Additional Judge,
City Civil Court, Chennai.
2. The learned IV Assistant Judge,
City Civil Court, Chennai.

+1cc to Mr.T.Velumani, Advocate, S.R.No.82146

S.A.No.910 of 2019

SVI(CO)
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