

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAIWAMY

W.P. No.9156 of 2014 and
M.P.No.1 of 2014

Mrs.Shakira Thasin

.. Petitioner

v.

1 Indian Bank
Represented by its Authorised Officer
Asset Recovery Management Branch II
4th Floor No.55, Ethiraj Salai
Egmore, Chennai - 8.

2 Mr.Devendra Bhandari

3 Mr.Jithendra Bhandari

4 Mr.Mahendra Bhandari

5 The Registrar
The Debts Recovery Appellate Tribunal
Chennai - 2.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records on the file of the 5th respondent in RA (SA) No. 57 of 2013 and dated 6th day of March 2014 and quash the proceedings therein as illegal, incompetent, irregular, without jurisdiction and unreasoned.

For Petitioner : Mr.V.Raghavachari

For Respondents: Mr.V.Jayesh B.Dolia - for R1

Mr.D.Sreenivasan- for R2 to R4
for M/s.Ramalingam Associates

R5 - Tribunal

O R D E R

(Order of the Court made by The Hon'ble Chief Justice
and M.DURAISWAMY,J.)

The petitioner has filed the above Writ Petition to issue a Writ of Certiorari to call for the records on the file of the 5th respondent in RA (SA) No. 57 of 2013, dated 06.03.2014 and to quash the same.

2. The petitioner is the legal heir of the guarantor. A notice dated 22.11.2008 under section 13(2) of the SARFAESI Act was issued to the borrower and the guarantor. Thereafter, a possession notice was issued on 10.09.2009. Thereafter, the respondent-bank filed a petition in CrI.M.P.No.1132 of 2010 before the Chief Judicial Magistrate, Vellore under section 14 of the SARFAESI Act for taking possession of the property. The Chief Judicial Magistrate, by order dated 25.10.2010, ordered eviction. Challenging Section 13(4) notice and the order passed by the Chief Judicial Magistrate, Vellore under section 14 of the SARFAESI Act, the petitioner preferred an appeal in S.A.No.294 of 2012 before the Debts Recovery Tribunal.

3. The Debts Recovery Tribunal-II, Chennai, by order dated 08.04.2013, allowed the appeal.

4. Aggrieved over the same, the auction purchasers preferred an appeal in RA (SA) No. 57 of 2013 before the Debt Recovery Appellate Tribunal, and the Appellate Tribunal, by order dated 06.03.2014, allowed the appeal and set aside the order passed by the Debts Recovery Tribunal.

5. The learned counsel appearing for the petitioner submitted that the respondent-bank filed a petition in CrI.M.P.No.1132 of 2010 under section 14 of the SARFAESI Act, before the Chief Judicial Magistrate, Vellore, who has no jurisdiction to entertain the petition. The learned counsel further submitted that under section 14 of the SARFAESI Act, in respect of Metropolitan Cities, the Chief Metropolitan Magistrate shall have jurisdiction to entertain the petition and in respect of other areas, the District Magistrate-cum-District Collector shall have jurisdiction.

6. In the case on hand, since there is no Chief Metropolitan Magistrate available in Vellore, The District Magistrate-cum-District Collector shall have jurisdiction to entertain the petition filed under section 14 of the SARFAESI Act. Since the Chief Judicial Magistrate, Vellore, has passed the order without jurisdiction, the same is liable to be set aside. Accordingly, the same is set aside. However, it is open to the

respondent-bank to file fresh petition under section 14 of the SARFAESI Act before the District Magistrate-cum-District Collector. Since the District Collector is not a party in this Writ Petition, we are not giving any direction to the District Collector .

With these observations, the Writ Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

Rj
To

1 The Authorised Officer
Indian Bank
Asset Recovery Management Branch II
4th Floor No.55, Ethiraj Salai
Egmore, Chennai - 8.

2 The Registrar
The Debts Recovery Appellate Tribunal
Chennai - 2.

+2 Ccs to M/s.A.Ajimath Begam, Advocate sr 5549.

+2 Ccs to Mr.Ramalingam Associates sr 5886.

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RV(CO)
SP(03/04/2019)

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