

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2019

CORAM :

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

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.21017 of 2019 and
W.M.P.Nos.20203, 20205 & 20207 of 2019

K.Ismail .. Petitioner

Vs.

- 1.The District Collector cum District Magistrate,
Coimbatore, Coimbatore District.
- 2.The Authorized Officer,
Indian Overseas Bank,
Asset Recovery Management Branch,
Canteen Block First Floor,
Central Office Building,
763, Anna Salai, Chennai - 600 002.
- 3.M/s.AKR Viyappar Ltd.,
(Formerly AKR Viyappar Ltd.,)
Door No.10, Chitthammal Extn to Main Road,
Teynampet, Chennai - 600 018.
- 4.Farook
- 5.Nagoor Mohideen
- 6.Narasimman
- 7.PMA Saleema
- 8.M/s.AKR Holding Pvt. Ltd.,
No.59, MKN Road, Guindy, Chennai - 600 032.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of certiorarified mandamus to call for the connected records pertaining to the passing of the order dated 01.07.2019 n proceedings No.D.Dis.No.23714/2018/E3 under Section 14 of the SARFAESI Act on the file of the 1st respondent and quash the same and consequently direct the 1st respondent to handover the possession of the properties to the petitioner and direct the 1st respondent to pass orders on

petitioner's un-numbered impleading petition dated 28.05.2019 and conduct fresh proceedings under Section 14 of the SARFAESI Act.

For Petitioner : Mr.T.Velu

For Respondents: Mr.S.N.Parthasarathi,
Government Advocate (R1)

O R D E R

(ORDER OF THE COURT WAS MADE BY M.DURAI SWAMY, J.)

The above Writ Petition has been filed by the petitioner to issue a Writ of certiorarified mandamus to call for the records pertaining to the order dated 01.07.2019 under Section 14 of the SARFAESI Act on the file of the 1st respondent and to quash the same and consequently direct the 1st respondent to handover the possession of the properties to the petitioner and direct the 1st respondent to pass orders on the petitioner's un-numbered impleading petition dated 28.05.2019 and conduct fresh proceedings under Section 14 of the SARFAESI Act.

2.The petitioner, who entered into Sale Agreement with the 3rd respondent for the purchase of the mortgaged property, has filed the Writ Petition challenging the order passed by the District Collector under Section 14 of the SARFAESI Act.

3.According to the petitioner, he was put in possession of the property by the 3rd respondent and therefore, the order passed by the 1st respondent on 01.07.2019 without giving an opportunity to him is erroneous.

4.With regard to the maintainability of the Writ Petition, without exhausting the alternate remedy available to him under Section 17 of the SARFAESI Act, the learned counsel for the petitioner relied upon a judgment reported in 2016 (2) CTC 319 [Vishal N. Kalsaria v. Bank of India and others] wherein the Hon'ble Supreme Court held that the tenants/lessees cannot approach the Debts Recovery Tribunal under Section 17 of the SARFAESI Act and therefore, the Writ Petition filed by the tenant/lessee is maintainable.

5.The said judgment was pronounced on 20.01.2016, however, an amendment was brought on 01.09.2016 by inserting Section 17 (4-A) of the SARFAESI Act giving right to the tenant/lessee to file an appeal under Section 17 of the SARFAESI Act. Therefore, even as per Section 17 (4-A), it is clear that if any person claims any tenancy or lease-hold rights in respect of the

secured assets, the Debts Recovery Tribunal shall have the jurisdiction to examine the claim of the tenancy or lease-hold right and pass appropriate orders.

6. In the case on hand, the petitioner is only an agreement holder. In the judgment reported in 2011 (2) SCC 782 [Kanaiyalal Lalchand Sachdev & Ors v. State Of Maharashtra & Ors], the Hon'ble Supreme Court held that an action under Section 14 of the SARFAESI Act constitutes an action taken after the stage of Section 13(4), and therefore, the same would fall within the ambit of Section 17(1) of the Act. That apart, the petitioner has not established his right before the Competent Civil Court prior to claiming possessory right over the property. Even according to the petitioner, though the Sale Agreement was executed as early as on 24.01.2011, the same has not yet been executed by the 3rd respondent in his favour. In these circumstances, the petitioner is not entitled to claim any relief in this Writ Petition. If at all, the petitioner can only approach the Debts Recovery Tribunal for challenging the order passed by the 1st respondent under Section 14 of the SARFAESI Act. The Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector cum District Magistrate,
Coimbatore, Coimbatore District.

2. The Authorized Officer,
Indian Overseas Bank,
Asset Recovery Management Branch,
Canteen Block First Floor,
Central Office Building,
763, Anna Salai, Chennai - 600 002.

+1cc to Mr.T.Velu, Advocate Sr.63871
+1cc to the Government Pleader Sr.64256

W.P.No.21017 of 2019 and
W.M.P.Nos.20203, 20205 & 20207 of 2019

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srg 18/09/2019