

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2019

CORAM :

THE HON'BLE DR.VINEET KOTHARI, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.25247 of 2019

UCO Bank,
rep. by Assistant General Manager & Authorized Officer
Chennai Main Branch,
1st Floor, No.328, Thambu Chetty Street,
Chennai - 600 001. .. Petitioner

-vs-

1.Sesha Rao

2.M/s.Sathya Sayee Cold Storage Pvt. Ltd.,
rep. by Resolution Professional
Rajashree Santhanam,
(Under orders of Hon'ble NCLT, Chennai)
TF No.109 Anna Fruit Wholesale Market Complex,
Phase II Koyambedu,
Chennai - 600 092. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari calling for the records of the impugned order passed in Crl.M.P.No.1725 of 2019 in Crl.M.P.No.4531 of 2018 dated 24.5.2019 passed by the Chief Metropolitan Magistrate, Chennai and quash the same.

For Petitioner : Ms.V.Anusha

For Respondents : Mr.M.Chidambaram
for respondent No.1

No Appearance
for respondent No.2

ORDER

(Order of the Court was made by The Hon'ble Acting Chief Justice)

The UCO Bank, Chennai Main Branch, has filed this petition against the order dated 24.5.2019 passed under Section 14 of the Securitisation and Reconstruction of Financial assets and Enforcement of Security Interest Act, 2002 (in short "SARFAESI Act"), rejecting the application (Crl.M.P.No.4531 of 2018) filed by the petitioner Bank on the ground that the National Company Law Tribunal, Single Bench, Chennai (in short "NCLT") in its order dated 8.1.2019 had passed moratorium order in favour of the applicant Company, which is the lessee of the borrower of the Bank viz., Mr.Sesha Rao. The operative portion of the order passed by the learned Chief Judicial Magistrate on 24.5.2019 is quoted below for ready reference:

"4.Point:

The petitioner has filed this petition to reject the application filed by the 1st respondent u/s14 of the SARFAESI Act as the 1st respondent is prohibited to recover possession of the shops bearing Nos.TF/109 and TF/111, Anna Fruit Whole Sale Market, Koyambedu, Chennai-600 002 by the Hon'ble NCLT, Chennai under order dated 08.01.2019 made in CP/850/IB/2018.

5.This petition is filed by the Resolution Professional appointed by NCLT as per order dated 08.01.2019. According to NCLT's order, the owner or lessor is prohibited from recovery of any property where such property is occupied by or in possession of the corporate debtor. The respondent bank initiated action u/s.14 of the SARFAESI Act to take physical possession of the two shops which was in the possession of the petitioner company. As per the order of NCLT, this petitioner/3rd party took charge of the petitioner company and in possession of the shops as a Resolution Professional of the petitioner company. As such this petitioner/3rd party is a necessary party in the application filed u/s.14 of the SARFAESI Act.

6.As the shops are in possession of the petitioner/3rd party and the order of NCLT is in force, this petition u/s.14 of the SARFAESI Act is not maintainable and liable to be rejected."

2. The learned counsel for the petitioner Bank, Ms.V.Anusha, has submitted that the secured asset of the petitioner Bank belonging to the first respondent borrower Sesha Rao, son of Venkateswaralu, were Shop No.TF 109, Anna Fruit Wholesale Market Complex, Phase II Koyambedu, Chennai-92 and also similarly Shop Nos.TF 111 and TH-6/PH II in the same market. The learned counsel for the petitioner submitted that the learned Chief Judicial Magistrate, rejected the application under Section 14 of the SARFAESI Act filed by the petitioner Bank only on the ground of NCLT order dated 8.1.2019 though it pertains to only two out of the aforesaid three Shops leased out by the borrower to the applicant Company, whereas Shop TH-6/PH II was not concerned or under lease of respondent No.2 - M/s.Sathya Saye Cold Storage Private Limited. Therefore, as far as that property which was not the subject matter of lease with the applicant Company is concerned, the same could not have been the subject matter of moratorium under the provisions of Insolvency and Bankruptcy Code,2016 and, therefore, the learned Chief Metropolitan Magistrate ought to have considered the application under Section 14 of the SARFAESI Act on merits for all the properties separately and the property which was not the subject matter of moratorium before the NCLT ought to have been taken in possession and given over to the petitioner Bank under Section 14 of the said Act. She has also pointed out the affidavit of Resolution Professional filed before the learned Chief Metropolitan Magistrate, Egmore, Chennai by Smt. Rajashree Santhanam, wife of Mr.Santhanam, in whose affidavit, in paragraph 2, the said Resolution Professional qua the applicant Company has only stated the above Shops, viz., TF 109 and TF 111, are leased out by Sesha Rao to M/s.Sathya Sayee Cold Storage Private Limited.

3. The learned counsel for the first respondent, Mr.M.Chidambaram, also produced the counter-affidavit filed by M.V.Sesha Rao (first respondent herein), wherein M.V.Sesha Rao himself in paragraph 10 has stated only about leasing of two Shops viz., TF 109 and TF 111 to M/s. Sathya Sayee Cold Storage Private Limited (second respondent herein). Nothing about leasing of Shop No.TH-6/PH II has been mentioned in the said affidavit filed by the first respondent as well.

4. Therefore, the undisputed position between the parties seems to be that Shop TH-6 PH II in Anna Fruit Wholesale Market Complex, Phase II Koyambedu, Chennai-92 is not the subject matter of lease and, therefore, cannot be the subject matter of moratorium under the provisions of Insolvency and Bankruptcy Code, 2016 declared by the NCLT in its order dated 8.1.2019. Therefore, the learned Chief Metropolitan Magistrate, obviously,

has erred in rejecting the whole application under Section 14 of the SARFAESI Act filed by the petitioner Bank. Therefore, we allow this writ petition filed by the petitioner Bank, setting aside the order passed by the learned Chief Metropolitan Magistrate dated 24.5.2019 and remit the matter back to the learned Chief Metropolitan Magistrate, Egmore, Chennai, to decide the application under Section 14 of the SARFAESI Act filed by the petitioner Bank once again. The parties may appear before the learned Chief Metropolitan Magistrate, Egmore, Chennai, in the first instance on 02.12.2019. No costs. Consequently, W.M.P.Nos.24821 and 24822 of 2019 are closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

bbr

To:

1.The Chief Metropolitan Magistrate,
Egmore, Chennai.

+1cc to Ms.V.Anusha, Advocate SR.91475

+1cc to Mr.M.Chidambaram, Advocate SR.91076

W.P.No.25247 of 2019

KJI(CO)
CB(28/11/2019)