

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **16.12.2019**

CORAM:

THE HONOURABLE DR. **JUSTICE VINEET KOTHARI**
and

THE HONOURABLE MR. **JUSTICE C.SARAVANAN**
Review Application (Writ) No.223 OF 2019

1.The Authorized Officer,
M/s.Electronica Finance Ltd.,
No.116, T.V.S. Colony,
Anna Nagar West Extension,
Chennai 101 : petitioner

versus

1.V.Damodaran

2.The District Collector,
Kancheepuram District.

3.The Tahsildar,
Pallavaram Zone,
Pallavaram, Chennai

4.The Asst. Commissioner of Police,
S5, Pallavaram Police Station,
GST Road, Pallavaram, Chennai 43.

5.Ishwant Singh : respondents

Petition filed to review the order passed in W.P.No.30489 of
2019 dated 30.10.2019

For petitioner : Mr.S.Namasivayam

For respondent : Mr.M.C.Swamy,
for 1st respondent

Mr.S.Kamalakannan,
for respondents 2 to 4

ORDER

(made by DR.VINEET KOTHARI, J.)

This review application has been filed by the Financial Institution M/s.Electronica Finance Ltd., seeking to review the order of this court dated 30 October 2019, disposing of the writ petition in W.P.No.30489 of 2019, filed by the 1st respondent/lessee Mr.V.Damodaran.

2. Paragraph 7 of the order dated 30 October 2019 in W.P.No.30489 of 2019, reads as under :-

7. We, therefore, direct the petitioner to file an application under Section 17(4A) of the SARFAESI Act before the Debts Recovery Tribunal within two weeks from today. The Tribunal shall hear the same on merits and in accordance with law, after giving opportunity of hearing to the petitioner as well as the respondent bank and the concerned Tahsildar/District Collector. For a period of

three weeks from today, we direct the respondent authorities of the State to desal the property in question and allow the petitioner's family to reside in the same. However, we direct the petitioner not to create any third party right or allow possession of any third party in the said property. The position of possession after three weeks shall depend on the order to be passed by the Debts Recovery Tribunal in accordance with law.

3. Upon hearing the review petitioner and the learned counsel for the 1st respondent/lessee, we passed the following order on 12 December 2019.

"Learned counsel for the Review Petitioner M/s.Electronica Finance Limited, a financial institution, Mr.S.Namasivayam submitted that the order under Review dated 30.10.2019 was passed without notice to Respondent No.4, Financial Institution, the Petitioner herein whereby, the lessee/ Petitioner was allowed to reside in the secured asset-premises for a period of 3 weeks, but, despite lapse of 3 weeks period from that date

viz., 30.10.2019, the lessee/Petitioner has neither filed any Application before the Debt Recovery Tribunal nor has handed over vacant and peaceful possession of the property to the Financial Institution.

2. The learned counsel for the Review Petitioner drew our attention to the letter dated 11.9.2019 of the said lessee, Mr.Damodaran and submitted that he himself had undertaken before the Tahsildar that he would hand over the premises by 5.10.2019 and again on 14.10.2019, seeking time to hand over upto 18.10.2019, however, in view of the aforesaid order dated 30.10.2019, neither the Tahsildar nor the Review Petitioner, Financial Institution is able to take any action against the said person even though he has not complied with the direction of this court nor has filed any Application under Section 17(4A) of the SARFAESI Act. He further submitted that though they have filed a Caveat before the learned DRT, they have not received any notice from the learned DRT, so far.

3. Issue short notice to the Respondent Mr.V.Damodaran. Private service is allowed returnable on 16.12.2019. Additionally, copy of

the papers may be served on the learned counsel, Mr.M.C.Swamy, who had appeared on 30.10.2019 for the said person, V.Damodaran and Mr.S.Kamalesh Kannan, learned Government Advocate.

Put up on 16.12.2019 at 2.15 pm.

4. Today, Mr.M.C.Swamy, has put in appearance and submitted before us that an appeal before the Debts Recovery Tribunal No.III Chennai, was filed u/s 17(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, on 13 November 2019, within a period of two weeks, as directed by this court in its order dated 30 October 2019 and the said Appeal has been numbered as S.A.No.216 of 2019 and the matter is coming up before the Debts Recovery Tribunal on 19 December 2019.

5. The learned counsel for the review petitioner submitted that the fact that the property was taken in possession by the Tahsildar on 21 October 2019 between 11.45 am and 1 p.m. was not brought to the notice of this Court and the Court had directed the Tahsildar to hand over the possession of the property in question to the 1st

respondent/ lessee by de-sealing it, and in terms of the said direction, the Tahsildar has taken over the possession and handed it over to the 1st Respondent/lessee. He further submitted that the 1st Respondent and his family are still residing in the said premises, without any further order from the Debts Recovery Tribunal.

6. This Court is of the clear opinion that the interim protection to the 1st Respondent /lessee was for a limited period of three weeks, commencing from 30 October 2019 and the same is not entitled to be extended for any point of time beyond the period of three weeks from 30 October 2019, which has admittedly expired on 21 November 2019. We had made it clear that in paragraph 7 of the order dated 30 October 2019 that possession after three weeks shall depend upon the order to be passed by the Debts Recovery Tribunal in accordance with law. However, since no order has been passed by the Debts Recovery Tribunal even by today, i.e. 16 December 2019, after approximately one month of expiry of period of three weeks indicated in our order dated 30 October 2019, we direct the Tahsildar, Pallavaram Zone, Pallavaram, to take back possession of the premises in question from the first respondent/lessee and restore the position as on 21 October

2019, by keeping the property under lock and seal, to be maintained by the Tahsildar, Pallavaram.

7. This said order shall be complied with by the Tahsildar, Pallavaram, immediately and a report to this effect may be furnished to this court. Thereafter, the status quo shall be maintained by the parties and which will abide by the orders, if any, to be passed by the learned Debts Recovery Tribunal, after hearing the parties on 19 December 2019 or thereafter. Since the Tribunal is now seized of the matter, the parties are directed to make all their respective submissions before the Tribunal and not expected to file any further miscellaneous application before this court in this matter.

8. With these observations and directions, the review petition is disposed of. No costs. Consequently, W.M.P.No.33537 of 2019 is closed.

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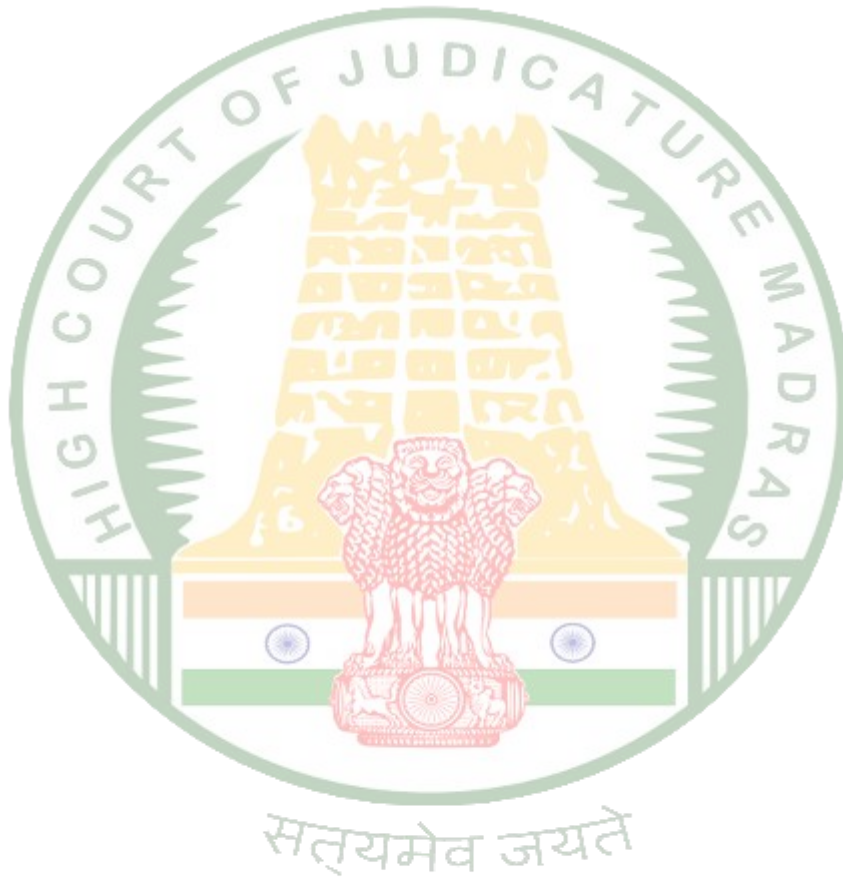
(V.K., J.)

(C.S.N., J.)

16.12.2019

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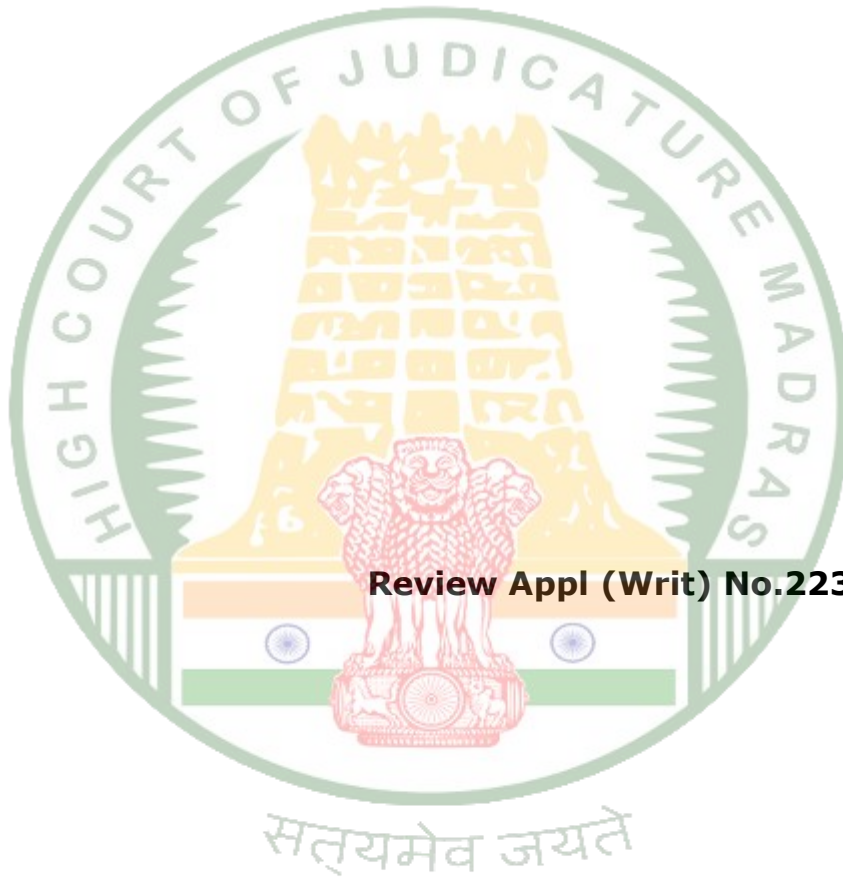
Order dt.16.12.2019 in Rev.App.No.223 of 2019
[Authorized Officer vs. V.Damodaran and Ors]

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DR.VINEETH KOTHARI, J.

and

C.SARAVANAN, J.



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