

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2019

CORAM :

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

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.34402 of 2018 and

W.M.P.No.39974 of 2018

1.Santhakumar
2.N.Chezhiyan
3.N.Mani

.. Petitioners

Vs.

Indian Bank,
rep by its Assistant General Manager,
No.9, Eldams Road, Alwarpet,
Chennai - 1.

.. Respondent

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of mandamus to direct the respondent to take possession of the property at Plot No.6, Bajani Koil 3rd Street, Villivakkam, Chennai - 600 049 comprised in Old Paimash No.304, T.S.No.111 presently T.S.No.111/3, Old Block No.40, New No.2, at Malligaicherry Village measuring an extent of 1200 sq.ft. total together with a plinth area ground floor measuring 882 sq.ft. and first floor measuring 904 sq.ft. (inclusive of common areas) situated within the Registration District of North Chennai and Sub Registrar of Konnur under Section 14 of the SARFAESI Act and hand over possession to the petitioners and pay a sum of Rs.10,00,000/- as compensation for mental agony caused to the petitioners as a result of the delay in delivering possession of the scheduled property or in the alternative refund to the petitioners the sale consideration of Rs.60,10,000/- along with Rs.6,00,000/- towards registration and stamp duty with interest at the rate of 12% from 01.10.2014 till the date of payment and pay a sum of Rs.10,00,000/- towards compensation for the failure of the respondent to deliver possession of the above property.

For Petitioners: Mr.S.Raveekumar

For Respondent : Mr.T.Sirish Chowdhary

O R D E R
(ORDER OF THE COURT WAS MADE BY M.DURAISWAMY, J.)

The petitioners have filed the above Writ Petition to issue a Writ of mandamus directing the respondent to take possession of the property at Plot No.6, Bajani Koil 3rd Street, Villivakkam, Chennai - 600 049 comprised in Old Paimash No.304, T.S.No.111 presently T.S.No.111/3, Old Block No.40, New No.2, at Malligaicherry Village, Section 14 of the SARFAESI Act and hand over possession to the petitioners and pay a sum of Rs.10,00,000/- as compensation for the failure of the respondent in delivering possession of the property.

2.When the matter is taken up for hearing, the learned counsel on either side submitted that the respondent - Bank had handed over vacant possession of the property to the petitioners and also the original documents pertaining to the said property to them.

3.In view of the submission made by the learned counsel on either side, no further direction need to be issued to the respondent - Bank.

4.The learned counsel appearing for the petitioners submitted that though Section 14 application is pending before the Chief Metropolitan Magistrate since 2014, the respondent - Bank had not taken possession and handed over the same to the petitioners and therefore, they should be directed to pay compensation of Rs.10 lakhs.

5.On a perusal of the materials available on record, it could be seen that the respondent - Bank filed the application under Section 14 of the SARFAESI Act in CrI.M.P.No.5245 of 2014 before the Chief Metropolitan Magistrate, Chennai on 21.08.2014 and warrant was also issued on 22.09.2014. Further, the Chief Metropolitan Magistrate had also appointed an Advocate Commissioner to take possession of the property. At that stage, one S.Salavudeen filed a Writ Petition in W.P.No.7341 of 2015 before this Court, claiming to be a tenant in the said premises and this Court, by order dated 16.03.2015, directed the Chief Metropolitan Magistrate to dispose of Section 14 petition in CrI.M.P.No.5245 of 2014 after affording opportunity to the said Salavudeen and also to the petitioners within a period of two months. Thereafter, the said Salavudeen was impleaded in CrI.M.P.No.5245 of 2014. Subsequently, by order dated 29.11.2017, the Chief Metropolitan Magistrate allowed the petition in CrI.M.P.No.5245 of 2014 and directed the Advocate Commissioner to take possession of the premises.

6. When the respondent - Bank had taken all necessary steps for taking possession under Section 14 of the SARFAESI Act, they cannot be blamed for the delay in taking possession of the property. Further, in the absence of any evidence produced by the petitioners with regard to the damages claimed by them, we are not inclined to grant the said prayer. In such view of the matter, the Writ Petition is liable to be dismissed. Accordingly, the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CSVIII)

//True Copy//

Sub Assistant Registrar

va
To

The Assistant General Manager,
Indian Bank,
No.9, Eldams Road, Alwarpet,
Chennai - 1.

+1cc to Mr.S.Raveekumar , Advocate SR.No. 28171

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A.SK(30/04/2019)

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