

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.1729/2020

P.Rajamani

.. Petitioner

Versus

1.The District Collector and District Magistrate
O/o.The District Collector, Coimbatore-18.

2.The Authorised Officer
Central Bank of India,
Cross Cut Road Branch, Gandhipuram
Coimbatore 641 012.

3.P.Vairavan

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the 1st respondent in his proceedings in D.Dis.No.10362/2018/E3 dated 03.06.2019 and quash the same and forbear the respondents 1 and 2 from taking possession of petitioner's property situate at No.8/3, 1st Floor, Mehar Ali Street, Indira Nagar, Vellalore, Coimbatore 646111.

For Petitioner : Mr.I.Abrar Mohamed Abdullah

ORDER

[Order of the Court was made by M.SATHYANARAYANAN,J.,]

(1)The petitioner claims to be the statutory tenant under the 3rd respondent by virtue of an unregistered Lease Agreement dated 17.08.2011. The 2nd respondent/Bank has initiated the proceedings against the 3rd respondent/Original borrower under

the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [in short 'the SARFAESI Act'] for having committed default in payment of dues, by issuing notice under Sections 13[2] of the SARFAESI Act dated 13.12.2014 and it was followed by the Possession Notice under Section 13[4] of the SARFAESI Act dated 17.12.2016 and publication was also effected in the Vernacular dailies and English Daily dated 21.12.2016 and the 2nd respondent/Bank in order to take actual physical possession of the assets, has invoked Section 14[1] of the SARFAESI Act by filing an affidavit dated 04.06.2018 before the 1st respondent, who upon receipt of the same, has issued notice to the 2nd respondent/Original borrower and elicited his response and a final order dated 03.06.2019 also came to be passed by the 1st respondent in the said affidavit and challenging the legality of the same, the present writ petition is filed.

(2) Mr. Abrar Mohamed Abdullah, learned counsel appearing for the petitioner would submit that challenging the order passed by the 1st respondent under section 14[1] of the SARFAESI Act, the petitioner has filed an appeal in SA.No.451/2018 on the file of the Debts Recovery Tribunal [DRT] at Coimbatore along with the petition for stay and notices were ordered and the 2nd respondent/Bank has also entered appearance and however, the petition for stay could not be taken for hearing for want of Presiding Officers in the said Tribunal for nearly six months and odd and hearings pertain to the appeals filed before DRT at Coimbatore are taken up by the DRT at Madurai subject to the convenience of the Presiding Office and on account of the same, the actual physical possession of the secured assets was also taken by the 2nd respondent/Bank. The learned counsel for the petitioner has placed heavy reliance on the decision rendered by the Hon'ble Supreme Court of India reported in 2016 [2] CTC 319 [Vishal N. Kalsaria Vs Bank of India and Others] and since the chance of success is very bright in the event of the appeal is disposed of finally, the learned counsel prays for appropriate orders.

(3) This Court heard the arguments advanced by the learned counsel for the petitioner and also perused the materials placed before it.

(4) It is to be noted at this juncture that as against the notice calling upon the petitioner to vacate and hand over the vacant possession of the premises, the petitioner had invoked the appeal remedy by filing an Appeal in SA.No.451/2018 and pendency of the appeal, also filed an application for stay and notices were ordered and for want of Presiding Officers in DRT at Coimbatore, the said application has not been taken up for hearing and in the interregnum, it appears that the actual possession of the assets have been taken by the 2nd

respondent/Bank.

- (5) The learned counsel for the petitioner would submit that in the light of the subsequent development, the petitioner is also contemplating to file a petition for amendment of the prayer in the pending SARFAESI appeal by making a challenge to the order dated 03.06.2019 passed by the 2nd respondent/Bank in D.Dis.No.10362/2018/E2. This Court is not commenting upon the said plea made by the petitioner as it is for the petitioner to work out the remedy in accordance with law.
- (6) In the light of the above facts and circumstances and also in the light of the effective alternate remedy available to the petitioner, this Court is not inclined to entertain this writ petition. However, taking into consideration, the plea made by the learned counsel for the petitioner, the DRT at Coimbatore, is directed to accord priority and dispose of SA.No.451/2018 as expeditiously as possible and not later than eight weeks from the date of receipt of a copy of this order.
- (1) In the result, the writ petition stands dismissed subject to the above observation. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The District Collector and District Magistrate
O/o. The District Collector, Coimbatore-18.
2. The Authorised Officer
Central Bank of India,
Cross Cut Road Branch, Gandhipuram
Coimbatore 641 012.

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