



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.7827 of 2020
and W.P.M.P.No.9366 of 2020

T.PANEERSELVAM

...Petitioner

VS

1. THE HONBLE CHIEF METROPOLITAN
Magistrate Court, Egmore,
Chennai 600 008
2. The Debt Recovery Tribunal II,
Spencers Plaza, Chennai 600002
3. Tata Capital Finance Service Ltd.,
Centennial Square, 1st Floor,
No6A, Dr.Ambedkar Salai,
Kodambakkam, Chennai 24
4. Vijay Frankalin

...Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records relating to the first respondent in Crl.M.P.No.4605 of 2017 dated 23.02.2018 and in Sr.No.2143 fo 2019 dated 15.11.2019 to quash the same and direct the third respondent to restore the portion in occupation of the petitioner in teh first floor D.No.18/1, Indira Street, Sardar Colony, Ekkattuthangal, Chennai 32 direct the third respondent to compensation for the illegal eviction on 20.06.2019 and the loss of business between 20.06.2019 to till date of restoration of possession as per section 19 of the SARFAESI Act, 2002.

For Petitioner : Mr.V.Sivaperuman



ORDER

(Made by DR.VINEET KOTHARI, J.)

The Court was held by Video Conference, as per the Resolution of the Full Court dated 30th April 2020, by Judges at the respective residence offices and the counsel, staff of the Court appearing from their respective residences.

2. Heard Mr.V.Sivaperuman, learned counsel appearing for the petitioner.

3. The grievance raised in the present writ petition by the petitioner Mr.T.Paneerselvam, son of Mr.Thangam, residing at 43, Thanakodi Raja Street, Ekkaduthangal, Chennai 600 032, is that he is a tenant in the premises owned by one Mr.Vijay Frankalin, and he was forcibly evicted from the demised premises at Door No.18/1, Indira Street, Sardar Colony 5th Street, Ekkatuthangal, Chennai 600 032, by the warrant issued by the Chief Metropolitan Magistrate, on 23.02.2018 on the application filed by the financier M/s. Tata Capital Finance Services Limited, Mumbai. The petitioner thereafter seems to have filed a complaint before the learned Chief Metropolitan Magistrate, Egmore, Chennai, under Section 84 of the Criminal Procedure Code, on 15th November 2019, against the landlord Mr.Vijay Franklin and the Financier M/s. Tata Capital Financial Services Limited, against his alleged forcible eviction from the demised premises in the month of June 2019. The said complaint came to be rejected by the learned Chief Metropolitan Magistrate, Egmore, on the same day, namely 15th November 2019, by a short order passed to the effect that the tenant has a remedy under Section 17(4A) of the SARFAESI Act and that the said complaint under Section 84, Cr.P.C. is not maintainable and therefore, the same is liable to be rejected. Aggrieved by the same, the petitioner has approached this Court by way of present writ petition filed on 02.06.2020.

4. Heard the learned counsel for the petitioner Mr.Sivaperuman at length. He vehemently argued before us that the petitioner is a tenant since 2013, in pursuance of the lease agreement dated 24th August 2013 and he had paid a sum of Rs.10.00 Lakhs to the said lessor for the demised premises and the interest on such deposit of Rs.10.00 Lakhs was to be the lease rent under the said lease agreement and thus, he was in valid legal possession of the demised premises and without giving any opportunity of hearing, he was forcibly evicted from the demised premises in question and even the complaint under Section 84, Cr.P.C. was rejected by the learned Chief Metropolitan Magistrate, who issued the warrant in favour of the Financier in question, without giving an opportunity of hearing



to the petitioner. He therefore submitted that the possession of the property in question may be restored to him.

5. It appears that the petitioner has not approached the Debt Recovery Tribunal, in the matter under Section 17(4A) of the Act. The said amended provisions of the SARFAESI Act, 2002, provides a remedy even to the tenants in the premises in question, which are the secured assets of the financial institutions and who can approach the Court of Chief Metropolitan Magistrate under Section 14 of the said Act for securing the possession of the property in question under the provisions of the Act. After the amendment of Section 17 of the SARFAESI Act, such tenants have been given a remedy under the amended provisions of Section 17(4A) of the Act. Therefore, obviously, an effective alternative remedy is available to the petitioner/tenant in the present case also. The petitioner has filed this writ petition also on 02.06.2020, after a gap of about six months of passing of order by the learned Chief Metropolitan Magistrate and about a year of his being dispossessed.

6. As the petitioner/tenant does not seem to have approached the Debt Recovery Tribunal so far under Section 17 (4A) of the Act, we are inclined to dispose of this writ petition, with a direction to the petitioner to approach the concerned Debt Recovery Tribunal, Chennai, for the grievance raised in the present writ petition under Section 17(4A) of the Act. If any application under Section 17(4A) of the Act is filed by the petitioner within a period of three weeks from today, we direct the Debts Recovery Tribunal not to raise any objection with regard to the expiry of limitation, if any applicable in such cases and shall pass an order, after providing an opportunity of hearing to the petitioner as well as the concerned parties likely to be affected in the matter, within a period of three months from the date of filing of such application. Since we are relegating the petitioner to the effective alternative remedy to the Debts Recovery Tribunal in the present matter, we are not inclined to pass any order for restoration of possession at this stage.

7. The writ petition is disposed of accordingly. No costs. Consequently, connected WMP is closed.

Sd/-

Assistant Registrar(AD I)

//True Copy//

Sub Assistant Registrar

kpl/ tar



To

1. The Chief Metropolitan Magistrate,
Egmore, Chennai - 8.

2. The Dalat Recovery Tribunal II,
Spencers Plaza, Chennai - 2.

W.P.No.7827 of 2020

RGN(CO)
KKV/13/07/2020