

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2020

CORAM

THE HON'BLE MR.JUSTICE **M.M.SUNDRESH**
and

THE HON'BLE MRS.JUSTICE **R.HEMALATHA**

W.P.No. 9819 of 2020
& W.M.P.Nos.11934, 11940 and 11942 of 2020

M.Udayakumar

.. Petitioner

Vs

1.The Chief Judicial Magistrate,
Salem District.

2.The Thasildar,
Valapady, Salem District.

3.The Branch Manager,
REPCO Home Finance Limited
(Promoted by REPCO Bank – Govt. of
India Enterprise),
No.1/5 Shanthi Plaza, Brindavan Road,
Opp. To Ponnusamy Gounder
Kalayana Mandapam,
Near S.K.S. Hospital, Salem – 636 004.

4.T.Vellaiyan

.. Respondents

Writ petition filed under Article 226 of the Constitution of India
praying to issue a writ of certiorarified mandamus to call for the

records relating to the order of the first respondent made in Crl.M.P.No.106 of 2020 and quash the same as illegal and consequently direct the respondents not to take possession or auction or evict the petitioner without following due process of law for the property situated in S.No.5/3 C1 measuring to an extent of Acre 0.12 cents, S.No.5/5 measuring to an extent of Acre 0.04 cents, S.No.47/2 measuring to an extent of Acre 0.06 cents, S.No.48/1A1 measuring to an extent of Acre 0.12 cents comprised in Kattuveppillaipatty Village and R.C.C. Building there bearing Door No.1/100 and comprised 17 rooms with electricity connection, water connection, electric motor, lights, fans, bureaus, chairs, tables and all other apparatus connected there to within the limit Kattuveppillaipatty Panchayat and Valapady Panchayat Union and within the limits of Sub Registration District of Valapady and Registration District of Salem East.

For Petitioner

.. Mr.Udayakumar
for M/s.Karan and Uday

For Respondents

.. Mr.G.K.Muthukumar,
Spl. Govt. Pleader for R2
Mr.A.Ilangovan for R3
Mr.R.Marudhachalamoorthy
for R4
R1 - Court

ORDER

(Order of the Court was made by *M.M.SUNDRESH, J.*)

Challenging the order of the first respondent made in Crl.M.P.No.106 of 2020 and for a consequential direction to the

respondents not to take possession or auction or evict the petitioner without following due process of law for the property situated in S.No.5/3 C1 measuring to an extent of Acre 0.12 cents, S.No.5/5 measuring to an extent of Acre 0.04 cents, S.No.47/2 measuring to an extent of Acre 0.06 cents, S.No.48/1A1 measuring to an extent of Acre 0.12 cents comprised in Kattuveppilaipatty Village and R.C.C. Building there bearing Door No.1/100 and comprised 17 rooms with electricity connection, water connection, electric motor, lights, fans, bureaus, chairs, tables and all other apparatus connected there to within the limit Kattuveppillaipatty Panchayat and Valapady Panchayat Union and within the limits of Sub Registration District of Valapady and Registration District of Salem East, the present writ petition has been filed.

2.When the matter is taken up for hearing, learned counsel appearing for the creditor Bank raised an issue of maintainability. It is submitted that the remedy of the petitioner is only before the Debts Recovery Tribunal.

3.Upon hearing the learned counsel, we find some force in the submission made by the learned counsel for the respondent Bank.

Certainly, this is a matter to be decided only before the Debts Recovery Tribunal. Such a view has also been taken by the Apex Court and as well as the Division Bench of this Court.

4. In such view of the matter, we are not inclined to pass any orders on merit. Accordingly, the writ petition stands closed, giving liberty to the petitioner to approach the jurisdictional Debts Recovery Tribunal. The petitioner is given two weeks' time from the date of receipt of a copy of this order for filing appropriate application before the jurisdictional Debts Recovery Tribunal. As and when the same is filed and thereafter numbered, it has to be disposed of within a period of three months from the date of numbering the said application. No costs. Consequently, connected miscellaneous petitions are closed.

(M.M.S., J.) (R.H., J.)
24.08.2020

Index: Yes/No
mmi/ssm

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W.P.No.9819 of 2020

**M.M.SUNDRESH, J.
and
R.HEMALATHA, J.**

(Order of the Court was made by M.M.SUNDRESH, J.)

This writ petition has been filed by the petitioner, who claims to be a tenant of the property, which is to be taken possession of pursuant to the proceedings concluded as against the borrower.

2.The learned counsel for the petitioner submitted that the petitioner is running a hotel. There are number of persons engaged in the hotel. Therefore, sufficient time will have to be given to hand over the possession.

3.The learned counsel appearing for the third respondent-Bank submitted that the alleged tenancy itself has been created after the initiation of the proceedings, that too, after the issuance of notice under Section 13 (4) of SARFAESI Act. Thus, legally the petitioner does not have any right. In any case, the tenancy agreement is also not a registered one.

4. Apart from the issue of maintainability, which we have already held, we do not find anything on merit. However, without going into the merits of the case, we have given liberty to the petitioner to approach the Debts Recovery Tribunal.

5. Today, this matter is taken up "for being spoken to" at the instance of the learned counsel for the petitioner, who seeks only time for handing over the possession.

6. The learned counsel for the petitioner seeks for three months time to hand over possession. However, the learned counsel for the respondent-bank submitted that two months time may be given to the petitioner to hand over the possession on condition the petitioner pays reasonable amount as rent.

7. In such view of the matter, we are inclined to grant two months time to the petitioner to hand over possession in favour of the respondent-bank on condition that the petitioner pays a sum of Rs.1 lakh (Rupees one lakh only) being rent for two months within a period of four weeks from the date of receipt of a copy of this order.

We make it clear that no more extension would be granted as this order is passed on consent. We also pass this order in view of the fact that the proceedings have become conclusive as against the borrower.

8.Post for reporting compliance on 05.11.2020

(M.M.S., J.) (R.H., J.)
27.08.2020

Note:-

1.Issue order copy on 31.08.2020.

2.Registry is directed to upload the order on or before 31.08.2020.

raa/kmk

To

1.The Chief Judicial Magistrate,
Salem District.

2.The Thasildar,
Valapady, Salem District.

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W.P. No. 9819 of 2020

**M.M.SUNDRESH, J.
and
R.HEMALATHA,J.**

raa/kmk



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WEB COPY 27.08.2020