



WEB COPY

**W.P(MD)No.3491 of 2020**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2020

CORAM

**THE HONOURABLE MR.JUSTICE M.DURAI SWAMY**

**AND**

**THE HONOURABLE MR.JUSTICE T.RAVINDRAN**

W.P (MD) No.3491 of 2020

and

W.M.P. (MD) Nos.2953, 2955 and 2956 of 2020

Yogesh

... Petitioner

Vs.

1.The Chief Judicial Magistrate,  
Madurai.

2.The Authorized Officer,  
M/s Kodak Mahindra Bank Ltd.,  
Ground Floor, No.3, West Marraat Street,  
Madurai-625 001.

3.Ramasubbu

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned order in Cr.M.P.No.1524 of 2019, dated 08.01.2020 on the file of the first respondent and quash the same and further directing the second and third respondents to restore the possession of the tenanted premises, viz., basement, ground floor and first floor of the building bearing Door No.101 (now No.101 A) situated in T.S.No.134, North Perumal Maesthri Street, Madurai-625 001 to the petitioner.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.T.S.Mohammed Mohideen  
for R.1  
: Mr.Pala Ramasamy  
for R.2

\* \* \* \* \*

**ORDER**

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

The petitioner has filed the above writ petition to issue a Writ of Certiorarified Mandamus to call for the records in respect of the order in Cr.M.P.No.1524 of 2019, dated 08.01.2020 on the file of the first respondent and quash the same and further directing the respondents 2 and 3 to restore the possession of the tenanted premises, viz., basement, ground floor and first floor of the building bearing Door No.101 (now No.101 A) situated in T.S.No.134, North Perumal Maesthri Street, Madurai-625 001 to the petitioner.

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2. It is the case of the petitioner that he is a tenant in respect of the secured asset under the third respondent. The third respondent availed loan from the second respondent Bank and committed default in repaying the loan amount, which necessitated the second respondent to initiate a proceeding under the SARFAESI Act. Subsequently, the second respondent filed a petition in Cr.M.P.No.1524 of 2019 under Section 14 of the SARFAESI Act for taking physical possession of the property before the first respondent.

3. The first respondent, by order dated 08.01.2020, allowed the petition and also appointed a Commissioner to take physical possession of the secured asset. Challenging this order, the petitioner, who is a tenant, has filed the above Writ Petition.

4. It is the case of the petitioner that he was not issued with any notice by the first respondent in Cr.M.P.No.1524 of 2019 and therefore, the order passed by the first respondent is liable to be set aside. It is also pertinent to note that the petitioner had also filed two civil suits in O.S.No.643 of 2019, on the file of the District Munsif Court, Madurai Town and O.S.No.645 of 2019, on the file of the District Munsif Court, Madurai Town, against the third respondent as well as the second respondent Bank for permanent injunction restraining them from interfering with his possession.

5. According to the learned Counsel appearing for the second respondent, the suits filed by the petitioner are not maintainable in view of Section 34 of SARFAESI Act.

6. Mr.G.Prabhu Rajadurai, learned Counsel appearing for the petitioner submitted that the first respondent should have given an opportunity of hearing to the petitioner. The learned Counsel appearing for the petitioner relied upon two un-registered lease agreements alleged to have been executed on 03.06.2010 and 10.06.2010 for a period of two years.

7. It is settled law that if the lease agreement is executed for a period of one year or more, the same is compulsorily registrable, as per the provisions of the Registration Act. In the case on hand, the lease deeds relied upon by the petitioner are of the year 2010 and both are un-registered documents and the period of lease also came to an end in the year 2012. It is also pertinent to note that the borrowers filed an appeal challenging the possession notice before the Debts Recovery Tribunal, Madurai. However, the same has not been numbered, on the date of passing of the impugned order.

8. As against the order passed by the first respondent under Section 14 of the SARFAESI Act, the petitioner has got remedy by way of an appeal under Section 17 of the SARFAESI Act, before the Debts Recovery Tribunal. Without exhausting the alternate remedy, the



petitioner has filed the writ petition challenging the said order.

9. The main contention put forth by the learned Counsel appearing for the petitioner is that no notice was issued to the petitioner and therefore the impugned order is liable to be set aside. Further the learned Counsel appearing for the petitioner submitted that the writ petition is maintainable as against the order passed by the first respondent under Section 14 of the SARFAESI Act. In support of his contentions, the learned Counsel relied upon the following judgments:

(i) In *Harshad Govardhan Sondagar Vs. International Assets Reconstruction Company Limited and Others* reported in (2014)6 SCC 1, wherein the Honourable Supreme Court held as follows:

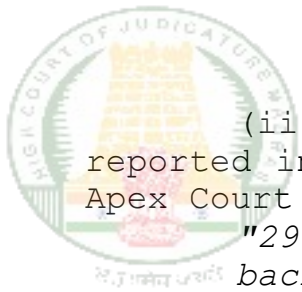
"28. .... If the lessee surrenders possession, the lease even if valid gets determined in accordance with clause (f) of Section 111 of the Transfer of Property Act, but if he resists the attempt of the secured creditor to take possession, the authorised officer cannot evict the lessee by force but has to file an application before the Chief Metropolitan Magistrate or the District Magistrate under Section 14 of the SARFAESI Act and state in the affidavit accompanying the application, the name and address of the person claiming to be the lessee. When such an application is filed, the Chief Metropolitan Magistrate or the District Magistrate will have to give a notice and give an opportunity of hearing to the person claiming to be the lessee as well as to the secured creditor, consistent with the principles of natural justice, and then take a decision. If the Chief Metropolitan Magistrate or District Magistrate is satisfied that there is a valid lease created before the mortgage or there is a valid lease created after the mortgage in accordance with the requirements of Section 65A of the Transfer of Property Act and that the lease has not been determined in accordance with the provisions of Section 111 of the Transfer of Property Act, he cannot pass an order for delivering possession of the secured asset to the secured creditor. But in case he comes to the conclusion that there is in fact no valid lease made either before creation of the mortgage or after creation of the mortgage satisfying the requirements of Section 65A of the Transfer of Property Act or that even though there was a valid lease, the lease stands determined in accordance with Section 111 of the Transfer of Property Act, he can pass an order for delivering possession of the secured asset to the secured creditor.



29. Sub-section (3) of Section 14 of the SARFAESI Act provides that no act of the Chief Metropolitan Magistrate or the District Magistrate or any officer authorised by the Chief Metropolitan Magistrate or District Magistrate done in pursuance of Section 14 shall be called in question in any court or before any authority. The SARFAESI Act, therefore, attaches finality to the decision of the Chief Metropolitan Magistrate or the District Magistrate and this decision cannot be challenged before any court or any authority. But this Court has repeatedly held that statutory provisions attaching finality to the decision of an authority excluding the power of any other authority or Court to examine such a decision will not be a bar for the High Court or this Court to exercise jurisdiction vested by the Constitution because a statutory provision cannot take away a power vested by the Constitution. To quote, the observations of this Court in *Columbia Sportswear Company v. Director of Income Tax, Bangalore* [MANU/SC/0613/2012 : (2012) 11 SCC 224];

17. Considering the settled position of law that the powers of this Court under Article 136 of the Constitution and the powers of the High Court under Articles 226 and 227 of the Constitution could not be affected by the provisions made in a statute by the Legislature making the decision of the tribunal final or conclusive, we hold that Sub-section (1) of Section 245S of the Act, insofar as, it makes the advance ruling of the Authority binding on the applicant, in respect of the transaction and on the Commissioner and income-tax authorities subordinate to him, does not bar the jurisdiction of this Court under Article 136 of the Constitution or the jurisdiction of the High Court under Articles 226 and 227 of the Constitution to entertain a challenge to the advance ruling of the Authority.

In our view, therefore, the decision of the Chief Metropolitan Magistrate or the District Magistrate can be challenged before the High Court under Articles 226 and 227 of the Constitution by any aggrieved party and if such a challenge is made, the High Court can examine the decision of the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, in accordance with the settled principles of law."



(ii) In Vishal N. Kalsaria Vs. Bank of India and Others reported in (2016)3 Supreme Court Cases 762, wherein the Honourable Apex Court held as follows:

"29. When we understand the factual matrix in the backdrop of the objectives of the above two legislations, the controversy in the instant case assumes immense significance. There is an interest of the bank in recovering the Non Performing Asset on the one hand, and protecting the right of the blameless tenant on the other. The Rent Control Act being a social welfare legislation, must be construed as such. A landlord cannot be permitted to do indirectly what he has been barred from doing under the Rent Control Act, more so when the two legislations, that is the SARFAESI Act and the Rent Control Act operate in completely different fields. While SARFAESI Act is concerned with Non Performing Assets of the Banks, the Rent Control Act governs the relationship between a tenant and the landlord and specifies the rights and liabilities of each as well as the rules of ejectment with respect to such tenants. The provisions of the SARFAESI Act cannot be used to override the provisions of the Rent Control Act. If the contentions of the learned counsel for the respondent Banks are to be accepted, it would render the entire scheme of all Rent Control Acts operating in the country as useless and nugatory. Tenants would be left wholly to the mercy of their landlords and in the fear that the landlord may use the tenanted premises as a security interest while taking a loan from a bank and subsequently default on it. Conversely, a landlord would simply have to give up the tenanted premises as a security interest to the creditor banks while he is still getting rent for the same. In case of default of the loan, the maximum brunt will be borne by the unsuspecting tenant, who would be evicted from the possession of the tenanted property by the Bank under the provisions of the SARFAESI Act. Under no circumstances can this be permitted, more so in view of the statutory protections to the tenants under the Rent Control Act and also in respect of contractual tenants along with the possession of their properties which shall be obtained with due process of law.

37. It is a settled position of law that once tenancy is created, a tenant can be evicted only after following the due process of law, as prescribed under the provisions of the Rent Control Act. A tenant cannot be arbitrarily evicted by using the provisions of the SARFAESI Act as that would amount to stultifying the



statutory rights of protection given to the tenant. A non obstante clause (Section 35 of the SARFAESI Act) cannot be used to bulldoze the statutory rights vested on the tenants under the Rent Control Act. The expression 'any other law for the time being in force' as appearing in Section 35 of the SARFAESI Act cannot mean to extend to each and every law enacted by the Central and State legislatures. It can only extend to the laws operating in the same field. "

10. There cannot be any dispute with regard to the ratio laid down by the Honourable Supreme Court in the above referred judgments. Both judgments were delivered prior to 01.09.2016, on which date, the amendment was brought in Section 17 of the SARFAESI Act by introducing Section 17 (4-A), giving right to the tenant / lessee to challenge the orders before the Debts Recovery Tribunal by way of a securitization appeal. Similarly, in the case on hand, the petitioner, who is a tenant, has got remedy by way of an appeal under Section 17(4-A) of the SARFAESI Act, provided establishing his tenancy right before the Debts Recovery Tribunal.

11. As per Section 17(4-A) of the SARFAESI Act, the tenant has got remedy by way of an appeal as against the order passed by the first respondent. The petitioner without exhausting the alternate and efficacious remedy available to him under Section 17 (4-A) of the SARFAESI Act, has filed the Writ Petition.

12.1. The Hon'ble Supreme Court of India, in the judgments reported in 2018 (3) Supreme Court Cases 85 [Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C.], and 2018 (1) Supreme Court Cases 626 [Agarwal Tracom Private Limited Vs. Punjab National Bank and others] held that the aggrieved parties cannot challenge the SARFAESI proceedings directly by filing a Writ Petition under Article 226 of the Constitution of India without exhausting the appeal remedy available to them.

12.2. In a recent decision of the Supreme Court dated 05.10.2018 in ICICI Bank Limited v. Umakanta Mohapatra, Civil Appeal Nos.10251 - 10265 of 2018 arising out of SLP (C) Nos.16758 - 16772 of 2015, the Supreme Court has referred to the decision in Authorized Officer, State Bank of Travancore and Another. vs. Mathew K.C., (2018) 3 SCC 85, and has observed that despite several judgments, including the decision of Mathew K.C., supra, the High Courts continue to entertain matters which arise under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI') and keep granting interim orders in favour of persons who are Non-Performing Assets. Further, the Apex Court held that Writ Petition filed by the aggrieved party without exhausting the statutory remedy



available under the SARFAESI Act and Recovery of Debts Due to Banks and Financial Institutions Act, is not maintainable.

13. The ratio laid down by the Hon'ble Apex Court in the above referred judgments is applicable to the present case.

14. In these circumstances, since the petitioner has filed the writ petition without exhausting the alternate remedy available to him under SARFAESI Act, we are not inclined to entertain the Writ Petition. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are also dismissed.

15. After pronouncing the order, Mr.G.Prabhu Rajadurai, learned Counsel appearing for the petitioner, submitted that the respondents 1 and 2 may be directed to de-seal and unlock the premises for a period of one week, enabling the petitioner to remove all his belongings from the said premises.

16. In view of the request made by the learned Counsel appearing for the petitioner, we direct the respondents 1 and 2 to de-seal and unlock the secured asset at 10.00 a.m., on 25.02.2010 enabling the petitioner to remove his belongings from the said premises for a period of one week. We also make it clear that the respondents 1 and 2 shall again seal and lock the premises at 05.00 p.m., on 03.03.2010.

Sd/  
Assistant Registrar

/True copy/

/ /2020  
Sub Assistant Registrar

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To  
The Chief Judicial Magistrate,  
Madurai.

+1 CC to M/s.T.S.MOHAMED MOHIDEEN, Advocate ( SR-7571[F] dated 21/02/2020 )

+1 CC to M/s.PALA.RAMASAMY, Advocate ( SR-7727[F] dated 21/02/2020 )

+1 CC to M/s.G.PRABHURAJADURAI, Advocate ( SR-7765[F] dated 24/02/2020 )

W.P (MD)No.3491 of 2020  
and  
W.M.P. (MD)Nos.2953, 2955 and 2956 of 2020  
21.02.2020

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