

W.M.P.No.782 of 2021 in W.P.No.18395 of 2020

R. SUBBIAH, J

and

SATHI KUMAR SUKUMARA KURUP, J

(The Order of the Court was made by R.Subbiah, J)

This impleading petition has been filed by M/s. Aascar Entertainment (P) Ltd., seeking to implead themselves as third respondent in W.P.No.18395 of 2020.

2. According to the impleading petitioner, they are the owner of the property in question namely Cinema Theater, which was permitted to be operated by the writ petitioner with an authorisation given by them. In other words, the writ petitioner is only a licensee in respect of the property in question. The property in question was subjected to mortgage with the second respondent-bank, which has initiated measures as contemplated under the SARFAESI Act and brought the property in question under auction. The writ petitioner, expressing his willingness to purchase the property, has submitted representations to the respondents seeking to take

physical possession of the property so as to enable him to purchase the property. Even according to the writ petitioner, as on date, the property in question is in possession of the impleading petitioner and therefore, they are proper and necessary party to the writ petition.

3. The main Writ Petition in W.P.No.18395 of 2020 was filed by the writ petitioner praying for issuance of a Writ of Mandamus to direct the first respondent-District Collector, Salem, to take physical possession of the theatres owned by M/s.Ascar Entertainment Private Limited (proposed third respondent) and hand over the same to the second respondent-Authorised Officer of the Indian Overseas Bank (IOB), Central Office, Chennai, as per the order dated 12.10.2018 passed by the first respondent-District Collector, Salem under Section 14(1) and (2) of SARFAESI Act and to direct the second respondent-IOB to consider the representation given by the writ petitioner to the second respondent-IOB on 03.03.2020 and the subsequent reminder dated 18.11.2020 to purchase the property.

4. In the affidavit filed in support of the present impleading petition, it is stated that the impleading petitioner is in physical possession of the

properties in question and therefore, the writ petitioner ought to have impleaded the impleading petitioner in the writ petition. However, without impleading the impleading petitioner, the writ petition has been filed and it is not maintainable. In fact, the impleading petitioner has already filed a suit in O.S.No.100 of 2018 on the file of the II Additional District Court, Salem, in which, ex-parte injunction was obtained in I.A.No.102 of 2018, dated 10.04.2018. Therefore, according to the impleading petitioner, they are necessary and proper party to adjudicate the issues involved in the Writ Petition.

5. A detailed counter affidavit was filed by the writ petitioner-A.Chandrasekaran, stating that the petitioner in this impleading petition is a chronic non-performing account holder with the second respondent-IOB and several opportunities have been given to them for adjustment of the loan. As the impleading petitioner/borrower did not repay the outstanding dues of the Bank, the Bank had taken symbolic possession of the property by invoking Section 13(4) of the SARFAESI Act. Further, on 14.10.2018, at the request of the first respondent-District Collector, the second

respondent-Bank had passed an order under Section 14 of the SARFAESI Act for taking physical possession of the property and hand over the same to the first respondent-District Collector. The property was also brought to sale by auction on several occasions, but the auction could not materialise, as there was no purchaser. While so, on 01.03.2020, the property was once again brought to sale through e-auction. In response to the advertisement, on 03.03.2020, the writ petitioner made a direct offer to purchase the property at the reserve price of Rs.29,19,00,000/- as per the e-auction notice issued by the second respondent-Bank. As there was no response from the second respondent-Bank, on 18.11.2020, the writ petitioner gave another reminder letter to the second respondent-Bank, which also did not evoke any response. Therefore, the writ petitioner had filed the present Writ Petition for the relief stated supra. In such circumstances, the proposed third respondent is not a proper or necessary party to be impleaded in the writ petition especially when symbolic possession of the property has already been taken by the Bank. Thus, the writ petitioner prayed for dismissal of the present impleading petition.

6. Be that as it may. At the outset, we find that the auction conducted by the bank has not been confirmed in favour of the writ petitioner at all. That is the reason why the writ petitioner seeks to issue a Mandamus directing the respondents to take physical possession of the property in question so as to enable him to purchase it. Further, we find that the impleading petitioner is the owner of the property in question and as on date, the property in question is in physical possession of the impleading petitioner. Therefore, it cannot be said that the impleading petitioner is not a proper and necessary party to the Writ Petition. In our opinion, the impleading petitioner is necessary to be impleaded for effective and proper adjudication of this writ petition. Accordingly, this impleading petition is allowed.

7. List the Writ Petition for hearing on 10.02.2021.

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(R.P.S.J) (S.S.K.J)
29.01.2021

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Registry is directed to carry out the amendment in the Writ Petition.

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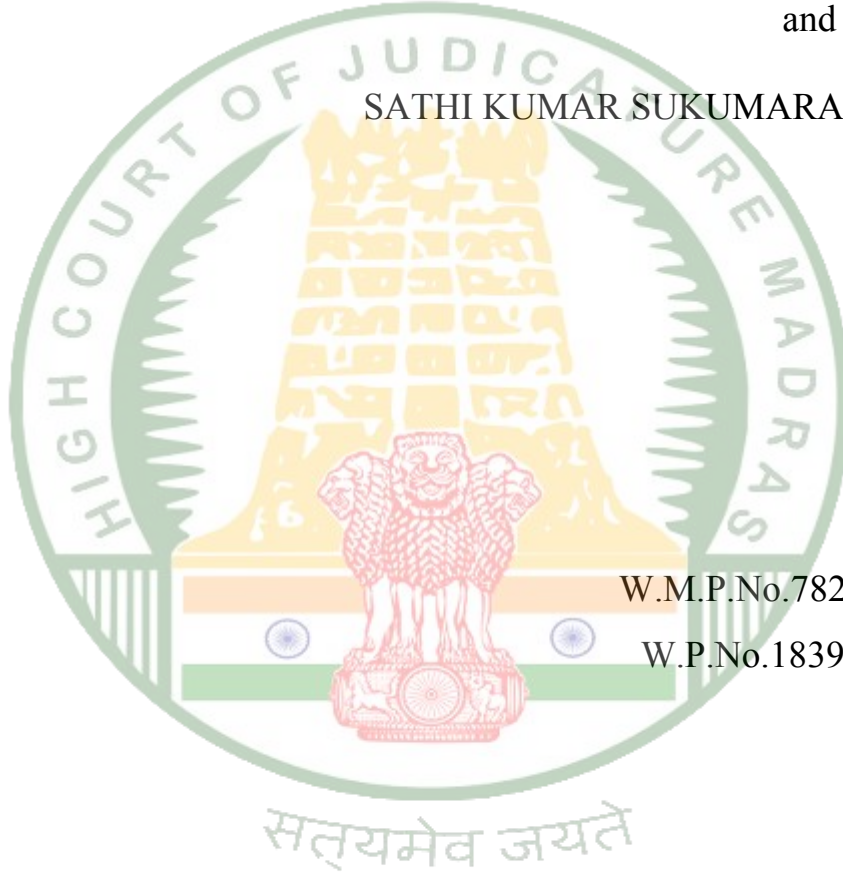
Order dated 29.01.2021
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