

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.10360 of 2021

Dilip Kumar

... Petitioner

Vs

1 Equitas Small Finance Bank ltd
Rep by its Area Legal Manager
769, Spencer Plaza 4th Floor
Phase 2 Mount Road Chennai 2

2 Saravanan

3 Vaishnavi

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records and orders of the Chief Metropolitan Magistrate, Egmore, Chennai, in Crl. M.P. No. 4841 of 2019 dated 7.1.2020 ordering the taking over the possession of the property and quash the same as illegal and unconstitutional and directing the 1st respondent / Bank to handover the possession to the petitioner herein.

For Petitioner : Mr.M.Annamalai

For Respondent-1 : Mr.A.Damodaran

ORDER

(Made by the Hon'ble Chief Justice)

The petitioner seeks the following prayers in this writ petition:

(a) issue ad-interim direction to the 1st respondent herein to return the lock and keys of the property which they got through the Advocate-Commissioner in Crl.M.P.No.4841 of 2019 on 23.03.2021;

(b) issue a writ of Certiorarified Mandamus by calling for the orders made in Crl.M.P.No.4841 of 2019 dated 07.01.2020 in the proceeding before the Chief Metropolitan

Magistrate, Egmore, Chennai and quash the same as illegal and unconstitutional and further directing the 1st respondent to handover the possession to the petitioner herein and pass such further or other orders as this Hon'ble Court may deem fit in the facts and circumstances of the case and thus render justice.

2. The grievance of the petitioner is that the first respondent secured creditor has exposed the petitioner to double jeopardy in the sense that the second creditor has proceeded against the petitioner in an arbitral reference and has also obtained an order under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 from the Chief Metropolitan Magistrate, Egmore.

3. The further grievance of the petitioner is that the first respondent secured creditor has misled the Chief Metropolitan Magistrate by making false allegations and obtaining an order that prejudices the petitioner herein.

4. The secured creditor is represented and submits that in view of the arbitration agreement contained in the loan agreement executed by the parties, the adjudication of the secured creditor's claim has to be by way of arbitration. However, the secured creditor also maintains that the secured creditor has a right under the Act of 2002 to proceed against the secured assets and the secured creditor has taken appropriate steps accordingly. The secured creditor clarifies that the arbitral reference pertains only to the monetary claim and does not pertain to the securities furnished by the borrower.

5. The second relief sought in the writ petition seems to be squarely against the order dated January 7, 2020 passed by the Chief Metropolitan Magistrate, Egmore. Such order is certainly amenable to challenge in this jurisdiction, as it has to be regarded as an administrative order, but the challenge has to be confined to the order being in error or in excess of jurisdiction or being otherwise palpably unconscionable or grossly disproportionate.

6. Proceedings under Section 14 of the Act of 2002 are purely administrative in nature and a feature of the Act of 2002 is that it provides executive assistance to the secured creditor to obtain possession of a secured asset or documents pertaining thereto upon making a request to the persons specified in Section 14 of the Act. The scheme of Section 14 of the Act is such that the authority approached under such provision has only to satisfy itself that the relevant declarations as indicated in the provision have been furnished. Once such authority sees that

the declarations have been furnished, the authority cannot go into the veracity of the declarations, but must accept them at face value. The authority approached under Section 14 of the Act has no jurisdiction to give notice to a borrower or afford a hearing to the borrower or otherwise seek to ascertain the veracity of the declarations furnished.

7. Section 14 of the Act indicates a time-line within which assistance as sought by the secured creditor has to be extended, to the extent such assistance is permissible. Usually, the relevant authority approached under Section 14 of the Act directs police assistance to be rendered by the Superintendent of Police exercising jurisdiction over the area where the immovable property is situated and the revenue officer exercising jurisdiction over the area also aids in the process of the secured creditor taking possession of the asset. In short, a secured creditor as defined in the Act of 2002 obtains the support of the official machinery to take possession of a secured asset or documents pertaining thereto so that such secured asset may be expeditiously dealt with and the money clogged in a bad loan is unblocked.

8. In the present case, there does not appear to be any error on the part of the concerned Chief Metropolitan Magistrate in issuing the impugned order. The concerned official appears to have appreciated the provisions and the need for assistance before passing the order. At any rate, the petition appears to be grossly belated since the order was issued more than a year back.

9. At the time of moving the petition, the argument made is more an attack on the conduct of the bank than the tenability of the order passed by the Chief Metropolitan Magistrate, Egmore. This change of tack may not be accepted. For a start, the secured creditor in this case cannot be said to be a State or authority within the meaning of the relevant expression in Article 12 of the Constitution. Clearly, the secured creditor in this case is not amenable to this jurisdiction as a public body.

10. More importantly, the remedy of the petitioner lies before the appropriate Debts Recovery Tribunal. There is no doubt that a notice under Section 13(2) of the Act must have been issued to the petitioner and there is further no doubt that a subsequent notice under Section 13(4) of the Act may also have been issued. Section 17 of the Act contemplates any grievance being carried to the appropriate Debts Recovery Tribunal exercising jurisdiction in respect of any measure adopted by the secured creditor under Section 13(4) of the Act. Thus, upon the issuance of a notice under Section 13(4) of the Act, the present petitioner ought to have realized that measures under Section 13(4) of the Act had been resorted to by the secured creditor in this case. The petitioner herein ought then to have approached

the appropriate Debts Recovery Tribunal within the time contemplated in Section 17 of the Act. As to the assertion of the petitioner that the petitioner is not a borrower within the definition of the Act of 2002, it must be pointed out that Section 17 permits any person aggrieved by the measures adopted by a secured creditor under Section 13(4) of the Act to approach such Tribunal. The right is not limited to a borrower within the meaning of the expression used in the Act.

11. There is no relief that the petitioner is entitled to at this stage. The order passed by the Chief Metropolitan Magistrate, Egmore, is beyond question and there does not appear to be any anomaly therein for interference in this extraordinary jurisdiction. As to the conduct of the bank the same cannot be gone into for the reasons indicated above, particularly since the petitioner had an efficacious remedy that the petitioner may not have availed of at the appropriate stage.

12. W.P.No.10360 of 2021 is dismissed. W.M.P.No.10938 of 2021 is closed. There will be no order as to costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To,

The Chief Metropolitan Magistrate, Egmore, Chennai.

W.P.No.10360 of 2021

RLD (CO)

A.SK(06.07.2021)

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