

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, THE CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

W.P.No.13225 of 2020

A.Shek Mohamed Aliar ...Petitioner

Vs

1. The Chief Metropolitan Magistrate,
Egmore, Chennai - 600 008.
2. The Authorised Officer,
M/s.Reliance Housing Finance Limited,
Reliance House, IV Floor,
No.5, Haddows Road,
Nungambakkam, Chennai - 600 006.
3. Antonimuthu Santhosam @ A.Santhosam ...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records in the Possession Notice dated 04.01.2019 issued by the second respondent under Section 13(4) of the SARFAESI Act and consequential order passed in Crl. M.P.No.771/2019 dated 22.04.2019 on the file of the first respondent and the public auction Notice under Rule 8(6) and 9(1) of the Security Interest (Enforcement Rules) 2002 dated 10.09.2020 on the file of the second respondent and quash the same as illegal and consequentially forbearing the second respondent from initiating any proceedings under the SARFAESI Act in respect of the said property Viz., Building and premises an extent of 6528 sq. ft. situate in No.117 Pallipattu Village, comprised in R.S.No.18/1 part, T.S.No.7/1, Block No.18 as per C.No:1078/93-94 dated 3.11.1993 situated at New No.104, Old No.78, Lattice Bridge Road, Adyar, Chennai-600 020.

For Petitioner : Ms.Srividhya Aravindan

For Respondents : Mr.Kamalakaran
for M/s.Jayasudha
for respondent No.2

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

This is another of the frivolous matters where the extraordinary jurisdiction under Article 226 of the Constitution has been invoked by a person aggrieved by the measures taken by a secured creditor in respect of secured assets.

2. The usual remedy in such a case is under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 since the expansive provision of such Act takes within its fold any person aggrieved and, to boot, the words "including borrower" are indicated in parenthesis. The petitioner also claims that the action taken by the bank is in derogation of the petitioner's claim in a previous suit instituted in or about the year 2005.

3. Petitions of the present kind should not be entertained unless extraordinary circumstances are cited. It is possible that a lenient view may have been taken during the lockdown when the Debts Recovery Tribunal may not have been functioning.

4. Notwithstanding the bank asserting that the petitioner may have been set up by the borrower only to stall the measures taken by the bank as secured creditor, the petitioner is given leave to approach the appropriate Debts Recovery Tribunal in the event the petitioner is aggrieved by any steps taken by the secured creditor bank. The order of status quo subsisting in the present proceedings will continue for a period of three weeks from date, but will dissolve upon the expiry of such time without reference to this Court. The order of status quo as earlier passed will, however, remain confined to the ground floor of the relevant property. The fact that an order in the nature of status quo was ordered by this Court should not unduly influence the Debts Recovery Tribunal when approached and it will be open to the Debts Recovery Tribunal to pass an appropriate order or refuse the reliefs sought by the petitioner herein uninfluenced by the previous orders passed herein.

5. As far as the suit is concerned, nothing may be said in such regard except to refer to Section 34 of the Act of 2002 that considerably reduces the authority of the civil Court to

pass orders in matters which are capable of adjudication by a Debts Recovery Tribunal under the said Act.

W.P.No.13225 of 2020 is disposed of without any order as to costs. Consequently, W.M.P.Nos.16345, 16346, 16347, 16379 of 2020 and 1015 of 2021 are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sasi

To:

1. The Chief Metropolitan Magistrate,
Egmore, Chennai - 600 008.

+2ccs to Mr.M. Aravindhan, Advocate, S.R.No.10136

+2ccs to Mr.K. Jayasudha, Advocate, S.R.No.10237

RV(CO)
SM/05/03/2021

W.P.No.13225 of 2020

सत्यमेव जयते

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