



W.P.No.9041 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2022

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

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Mayilai Sugumar @ M.T.Sukumar

.. Petitioner

Vs

- 1.Indian Overseas Bank,
Tambaram Branch,
130B/ BBR Towers, Mudichur Road,
Tambaram West,
Chennai-600 045.
- 2.The Authorised Officer,
Indian Overseas Bank,
Regional Officer, Chennai-II,
III Floor, Annexe Building,
No.763, Anna Salai,
Chennai – 600 002.
- 3.M/s.Sakthi Industries,
rep. by its Proprietor V.R.Chellappan,
No.41, Ramachandra Road,
Nehru Nagar, Chrompet, Chennai-600 044
Also at No.42, Vijay Nagar, North Extension,
Velacherry, Chennai-600 042.



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4.B.S.Balaji
5.B.S.Arun
6.B.S.Suganya

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondents 1 and 2 to hand over/deliver vacant possession of the secured asset being land and building on the eastern and south eastern side of Door No.39 (Old No.16/2), Burkit Road, T.Nagar, Chennai-17 comprised in Re-Survey No.140/2, TS No.5841 (as per Patta 5841/2) Block No.131 measuring to an extent of 2543 square feet, which was sold to the petitioner pursuant to a public auction sale held on 01.08.2005 and validate the sale certificate dated 11.09.2008 by registering it before the concerned Sub-Registrar within the time to be stipulated by this Court.

For the Petitioner : Mr.R.Bharath Kumar

For the Respondents : Mr.F.B.Benjamin George
for respondent Nos.1 and 2

: Mr.Najeeb Ushman Khan
for respondent Nos.4 to 6

ORDER

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

Mr.Mayilai Sugumar @ M.T.Sukumar, son of



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M.C.Thiruvengatasamy, a resident of Door No.163, 6th Street, Baba Nagar, Villivakkam, Chennai-49 has filed this writ petition for issuance of a writ of mandamus directing the Chief Manager, Indian Overseas Bank, Tambaram Branch and the Authorised Officer of Indian Overseas Bank, Regional Officer, Chennai-II, respondents 1 and 2 herein, to hand over/deliver vacant possession of the secured asset being land and building on the eastern and south eastern side of Door No.39 (Old No.16/2), Burkit Road, T.Nagar, Chennai-17 comprised in Re-survey No.140/2, T.S.No.584/1, Block No.131, measuring an extent of 2543 square feet.

2. The petitioner is the auction-purchaser of the aforesaid property belonging to the third respondent – M/s.Sakthi Industries. The third respondent, after availing financial assistance from the first respondent bank in the year 1988 by mortgaging the property bearing Door No.39 (Old No.16/2), Burkit Road, T.Nagar, Chennai, committed default in repayment, which necessitated the first respondent bank to file O.A.No.108 of 1998 before the Debts Recovery Tribunal, Chennai, for recovery of the balance amount of



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the mortgage loan and the said O.A. was subsequently transferred to the file of the Debts Recovery Tribunal III, Chennai and re-numbered as O.A.No.5 of 2007. In the meanwhile, respondents 4 to 6 purchased the mortgaged property through two registered sale deeds dated 19.11.1995. The recitals in the sale deeds also refer about the loan outstanding with the first respondent bank.

3. At this stage, learned counsel appearing for the petitioner drew our attention to the recital found at page No.5 of the sale deed executed in favour of B.S.Balaji (respondent No.4) dated 19.11.1995 and submitted that the property in question has been mortgaged with the first respondent. For the sake of convenience, the recitals found in pages 5 to 7 of the sale deed dated 19.11.1995 are extracted hereunder:

"AND WHEREAS the VENDOR has mortgaged the schedule mentioned property hereunder to Indian Overseas Bank, Tambaram West, Madras-600 045 by deposit of the title deeds relating to the property described in Schedule-A and B hereto as collateral security for facilities granted to the firm M/s. Sakthi



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Industries, Madras, of which the VENDOR is the Sole Proprietor.

AND WHEREAS the VENDOR due to business recession is unable to pay the dues to the Bank and therefore has decided to sell the property, subject to the said encumbrance.

AND WHEREAS the VENDOR has offered to sell and the PURCHASERS have agreed to buy a portion of A-Schedule property mentioned in the Schedule-B hereunder free from all encumbrances except the mortgage in favour of the said Indian Overseas Bank, Tambaram (West) Madras-600 045."

4. At this stage, Mr.F.B.Benjamin George, learned counsel appearing for the respondent bank, brought to our notice clause (d) of the sale deed dated 19.11.1995 and submitted that on the date of execution of the sale deed, the purchasers, namely, the respondents 4 to 6, have agreed to pay a sum of Rs.8 lakh towards the mortgage liability of M/s.Sakthi Industries and till date respondents 4 to 6 have not come forward to pay a single paisa to the respondent bank, which clearly shows that the sale deed dated 19.11.1995 has been executed by the third respondent to avoid



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payment of due to the respondent bank.
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5. Continuing his arguments, learned counsel for the petitioner submitted that the mortgaged property was finally brought to sale in public auction on 28.6.2005 after complying with the issuance of notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for short, "*the Act of 2002*"], followed by notice under Section 13(4) of the Act of 2002. The petitioner took part in the public auction and became a successful bidder. The sale was also confirmed on 5.9.2008.

6. Learned counsel further submitted that in the meanwhile S.A.No.13 of 2007 came to be filed by respondents 3 to 6 before the Debts Recovery Tribunal III, Chennai, and by the order dated 21.8.2008, S.A.No.13 of 2007 was dismissed. Subsequently, sale certificate was issued in favour of the petitioner on 11.9.2008. As physical possession of the property was not taken over, the respondent bank filed CrI. M.P.No.3017 of 2008 before the learned



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Chief Judicial Magistrate, Chennai, under Section 14 of the Act of 2002 and by order dated 22.1.2009, the learned Chief Judicial Magistrate appointed one Smt.Kalaiselvi, advocate, as an Advocate-Commissioner to take physical possession. On 15.7.2009, the Advocate-Commissioner filed a report returning the warrant stating that she was unable to take possession of the property.

7. Learned counsel submitted that, on 1.9.2009, the respondent bank filed Crl. M.P.No.2146 of 2009 in Crl. M.P.No.3017 of 2008 for appointing a new Advocate-Commissioner to take physical possession of the secured assets. Pursuant to the order of this Court dated 17.8.2010 passed in Crl.O.P.No.18800 of 2010, one Mr.G.Vijaya Anand, advocate, was appointed as an Advocate-Commissioner to take possession of the secured asset with the assistance of State House Officer, R1 Mambalam Police Station. In the meanwhile, respondents 4 to 6 filed W.P.No.27153 of 2009 challenging the action taken in Crl.M.P.No.2146 of 2009 and the petitioner has also filed W.P.No.2754 of 2010 directing the respondent bank to deliver the vacant possession of the immovable



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property of the land and building in question. Finding that the petitioner has become successful bidder and paid the entire sale consideration and the sale certificate dated 11.9.2008 was issued in his and possession was not handed over by the respondent bank, by the order dated 15.2.2020, this Court directed the respondent bank to dispose of the representation of the petitioner dated 20.11.2008, followed by the representations dated 8.12.2008, 31.3.2009 and 30.9.2009 within two weeks from the date of receipt of a copy of the order. When the matter was proceeding endlessly like this, the petitioner came forward to file the present writ petition for the aforesaid prayer.

8. Heard Mr.Najeeb Ushman Khan, learned counsel appearing for the respondents 4 to 6.

9. We have considered the submissions made by the respective counsel and also perused the materials available on record.



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10. By the order dated 09.9.2022, this Court passed the following order:

"The writ petition has been filed to issue a direction for handing over vacant possession of the property for which the petitioner remained successful auction purchaser. It is submitted that after the litigation at the instance of the borrower and dismissal of the appeal by the Supreme Court, the possession of the property has not been given by the bank.

2. The learned counsel for the bank submits that the proceedings under Section 14 of the SARFAESI Act, 2002 were initiated but on account of the litigation by the borrower which went upto Supreme Court, the possession of the property could not been given. The prayer is to appoint two advocate commissioners for giving physical possession of the property at the cost of the bank so that the possession of the property can be given to the auction purchaser. The learned counsel for the petitioner has no objection for it.

3. Accordingly, M/s.T.Reena Thomas, Advocate, Enrol No.:MS 4663/2021, residing at No.68, 'G'



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Block, Thanikachalam Nagar, 80 Feet Main Road, Chennai 600110, Ph.No.: 7397424098 and Mr.K.Rohith Kumar, Advocate, Enrol No.:4908/2019, residing at No.3/7B, T.V.S.Nagar, 6th Cross Street, Padi, Chennai 600050, Ph.No.: 9789083042, are appointed as Court Commissioners who will visit the site for physical possession of the property and then, make a report for handing over the possession of the property to the auction purchaser. The Court Commissioners would be paid Rs.50,000/- (Rupees fifty thousand only) each by the bank and accordingly, the Commissioners would fix a date for their inspection and make a report for handing over physical possession of the property to the auction purchaser and submit it to the Court within a period of one month from today.

4. Since the property may be in possession of the borrower, in case of any difficulty, the Court Commissioners would be at liberty to take the help of the local police and in case of any such request, the Station House Officer of the police station under whose jurisdiction the property is situate would provide proper assistance to them.

List the petitions for compliance on 20.10.2022."



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11. Pursuant to the order of this Court dated 9.9.2022, the Advocate-Commissioners jointly visited the property in question after issuing notice to all the parties. The Court appointed Advocate-Commissioners have inspected the property in question on 28.9.2022 and filed their joint report before this Court.

12. In their report, the Advocate-Commissioners stated that they fixed the date of inspection on 28.9.2022 at 10.00 am and sent notice of inspection to the petitioner as well as the respondent bank and their respective counsel on 22.9.2022. Since the subject-property is situated in a busy road i.e. Burkit Road, T.Nagar, Chennai, and a portion of it was being used as Balaji Men's Hostel and another portion was used as tea-cum-juice shop, apprehending law and order problem at the instance of occupants while taking physical possession, they met the Inspector of Police, R1-Mambalam Police Station on 22.9.2022 and made a written request to provide necessary protection. Accordingly, they visited the subject-property on 28.9.2022, along with a police team comprising 10 constables



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headed by Sub-Inspector of Police of R1-Mambalam Police Station;
the Authorised Officer, Chief Manager, Security personnel of Indian
Overseas Bank, Tambaram; and, the petitioner's son
Chandramohan.

13. In the report, it has been stated that on intimation to the
paying guests, tea shop owners and the father of respondents 4 to 6
to vacate the premises, the father of respondents 4 to 6, namely
C.A.Balu, informed them that he is neither a borrower nor a
guarantor and therefore the property cannot be shown nor can the
physical possession be taken. Immediately, the Advocate-
Commissioners explained the order of the Court. Though, initially
the father of respondents 4 to 6 made some objections, later they
agreed to vacate the premises. It is stated that after elaborate
discussion with the paying guests in the premises, they have taken
possession of the property in question and the entire process of
taking over was completed by 5.15 p.m. on 28.9.2022 and after
locking the entire premises, they kept 25 keys.



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14. Today when the matter is taken up, the Advocate-Commissioners have brought before this Court 25 keys and the same have been handed over to learned counsel for the petitioner in open Court, which were also received by learned counsel for the petitioner under due acknowledgment.

15. At this juncture, learned counsel appearing for respondents 4 to 6 submitted that they have purchased the property from the borrower through registered sale deeds dated 19.11.1995 and, therefore, physical possession need not be handed over to the petitioner till the disposal of the matter.

16. We do not find any justification or merit in the said submission made by learned counsel for respondents 4 to 6 for two reasons. Firstly, a cursory reading of the sale deed dated 19.11.1995 would show that the property in question was already mortgaged with the respondent bank and the purchase by the respondents 4 to 6 was during the subsistence of the mortgage. Secondly, what is disheartening us is when clause (d), which we



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have quoted supra, clearly shows that the respondent purchasers agreed to pay Rs.8 lakh to the respondent bank on the date of execution of the sale deeds, namely 19.11.1995, till date, they have not come forward to pay any money towards the liability, they are legally bound to discharge. Therefore, the sale deeds dated 19.11.1995 said to have been executed in favour of respondents 4 to 6 during the subsistence of the loan borrowed by the third respondent from the first respondent bank is only an attempt to knock away the property in question. Therefore, rejecting the submission made by learned counsel for the respondents 4 to 6, the bunch of 25 keys, as mentioned in the report of the Advocate-Commissioners, is handed over to learned counsel for the petitioner.

17. Since pursuant to the direction of this Court, the Advocate-Commissioners have taken possession of the property in question and handed over keys to learned counsel for petitioner today in Court, nothing further survives for consideration and, accordingly, the writ petition is closed.



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18. At this juncture, learned counsel for respondents 4 to 6 requested this Court that some movable items and documents are inside the premises and, therefore, the same may be allowed to be taken back by respondents 4 to 6 by 15.11.2022.

19. Learned counsel for the petitioner readily accepted such request to take back the movables and documents kept by respondents 4 to 6 in the premises.

20. Accordingly, we grant time till 15.11.2022 to respondents 4 to 6 to take back their belongings, including movables and documents, if any, from the premises in question, for which they may fix an agreeable date with the Advocate-Commissioners. It is made clear that such taking back of belongings shall be in the presence of the Advocate-Commissioners.

21. Learned counsel for the respondent bank, at this juncture, submitted that after taking over possession, they posted the security guards and since keys were handed over to learned counsel for the



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petitioner today, there is no further need to keep the security guards of the respondent bank and they may be permitted to recall them. Since keys of the premises in question were handed over to the learned counsel for the petitioner today, the respondent bank may withdraw their security guards from the premises.

22. It is also the submission of learned counsel for the respondent bank that since sale certificate in favour of the petitioner was issued on 11.9.2008, the respondent bank may be permitted to re-validate the same within two weeks. In view of the submission made by learned counsel for the respondent bank, two weeks' time is granted to the respondent bank to re-validate the sale certificate dated 11.9.2008 issued in favour of the petitioner.

22. The Advocate-Commissioners, it is stated, have incurred expenditure on paper publication, apart from expenditure towards secretarial assistance, travel, etc. Considering the volume of work undertaken by the Advocate-Commissioners, this Court hereby directs the first respondent bank to pay a further sum of



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Rs.50,000/- each to the Advocate Commissioners within a period of one week.

With the above observations, the writ petition is closed. There will be no order as to costs.

(T.R., ACJ.) (D.K.K., J.)
20.10.2022

Index : Yes/No
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To

1.Indian Overseas Bank,
Tambaram Branch,
130B/ BBR Towers, Mudichur Road,
Tambaram West,
Chennai-600 045.

2.The Authorised Officer,
Indian Overseas Bank,
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T.RAJA, ACJ.
AND
D.KRISHNAKUMAR, J.

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