



W.P.No.33483 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2022

CORAM :

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

AND

THE HON'BLE MR.JUSTICE PARESH UPADHYAY

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Bala Nivetha Vathana Valli Karunakaran

.. Petitioner

VS

1. M/s Phoenix ARC Private Limited
Dani Corporate Park, 7th Floor
No.158, CST Road, Kalina
Santacruz (E), Mumbai 400 098
Rep.by its Authorized Officer
Mr.SalieshIyenger

2. S.M.Sellakannan

3. V.Pazhanisamy
E.No.78118
Advocate Commissioner
Egmore Court
Chennai – 600 009.

4. Standard Chartered Bank
Rep. by its Manager
2nd Beach Line
Chennai 600 001.

.. Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Declaration declaring that the order dated 03-06-2022 passed by the Hon'ble Chief Metropolitan Magistrate Court, Egmore in CrI.M.P.No.6408/2022 as void on the ground that the order has been obtained on suppression of material facts and based on false affidavit and consequential steps taken by the 1st respondent M/s Phoenix ARC Private Ltd. Dated 23-11-2022 is null and void on the ground the notice issued beyond the scope of the warrant given to the Advocate Commissioner.

For the Petitioner : Mr.A.R.Nixon

ORDER

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

The petitioner claiming to be a tenant under the landlord, who was a borrower of the loan from the fourth respondent bank, has filed this writ petition questioning the validity of the order dated 3.6.2022 passed by the learned Chief Metropolitan Magistrate, Egmore in CrI. M.P.No.6408 of 2022 on the ground that the first respondent herein, who has taken out application before the learned Chief Judicial Magistrate, Egmore, has failed to disclose the occupation of the petitioner in the premises.

2. According to the petitioner, the father of the petitioner has



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entered into a lease agreement on 5.1.2005 with the owner of the building situated at Flat No.S3, Second Floor, Old No.20, New No.57, East Vanniyar Street, West K.K. Nagar, Chennai-78 measuring an extent of 520 sq. ft. on payment of Rs.1 lakh and stayed in the building with his family. Thereafter, a dispute arose between the owner S.M.Sellakannan and the father of petitioner, which ultimately compelled the petitioner's father to file Civil Suit No.1929 of 2006 on the file of the XV Assistant City Civil Court, Chennai for permanent injunction restraining the defendant therein from evicting or dispossessing the plaintiff from the suit property.

3. It is alleged by the petitioner that during the pendency of the said suit, Sellakannan filed I.P.No.1 of 2006 before the District Court, Ramanathapuram for adjudging him as insolvent, wherein the father of the petitioner Karunakaran was arrayed as respondent No.21 and the respondent Standard Chartered Bank was arrayed as respondent Nos.20 and 29 and later on, the petitioner's father Karunakaran died on 22.7.2019 leaving behind his wife and two daughters as his legal heirs and the petitioner is one among the legal heirs.



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4. It is also alleged that after the loan was transferred by the Standard Chartered Bank in favour of the first respondent on 17.12.2008, an application was moved by the first respondent before the learned Chief Judicial Magistrate, Egmore under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for brevity, "*the Act of 2002*"] for taking possession of the property in question. Considering the prayer made therein, the learned Chief Judicial Magistrate, Egmore, passed the impugned order dated 3.6.2022.

5. According to the petitioner, since the petitioner being a tenant of the property in question has not been shown as necessary party in CrI.M.P.No.6408 of 2022 and the impugned order dated 3.6.2022 has been passed behind the back of the petitioner, the same is in violation of the principles of natural justice. Therefore, the petitioner is entitled to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India.

6. We are unable to find any merit in the writ petition.



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Section 17 of the Act of 2002 provides that any person, including the borrower, aggrieved by any of the measures referred to in subsection (4) of Section 13 taken by the secured creditor or his Authorised Officer, may make an application before the Debts Recovery Tribunal having jurisdiction in the matter. When there is an effective alternative statutory remedy available to the petitioner, he cannot directly knock the doors of this court to exercise the jurisdiction under Article 226 of the Constitution of India.

7. Therefore, finding no merit in the writ petition, the same is dismissed. However, liberty is granted to the petitioner to approach the jurisdictional Debts Recovery Tribunal for relief. There will be no order as to costs. Consequently, W.M.P.No.32929 of 2022 is closed.

(T.R., ACJ.) (P.U., J.)
13.12.2022

Index : Yes/No
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To:

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