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C.R.P.No.4242 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.4242 of 2022

and

C.M.P.No.22240 of 2022

E.Dhamodharan

... Petitioner

Vs.

1.C.Narayanan

2.City Union Bank Limited,
Credit Recovery and Management Department,
No.24-B,Gandhinagar,
Kumbakonam – 612 001.

3.M/s.M.M.S.Iron Corporation,
Rep.by its Proprietor,
No.412, Sattur Road,
Kottaipatty,
Virudhunagar – 626 127.

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order in OS.SR.No.26369 of 2022 passed by the I Assistant City Civil Court, Chennai and direct the I Assistant City Civil Court, Chennai to take on record and number the suit in OS.SR.No.26369 of 2022 as maintainable before the Civil Court.

For Petitioner

: Mrs.Kavitha Nithyanandan



ORDER

The Civil Revision Petition has been instituted to set aside the order in OS.SR.No.26369 of 2022 passed by the I Assistant City Civil Court, Chennai and direct the I Assistant City Civil Court, Chennai to take on record and number the suit in OS.SR.No.26369 of 2022 as maintainable before the Civil Court.

2. The Revision Petitioner states that he is a tenant in respect of the premises at No.C-76, 14th Street, Periyar Nagar, Chennai – 600 082 and he is continuing in the said premises as tenant for about 15 years from the year 2007 onwards. The first respondent is the Landlord of the premises. There was an oral agreement between the revision petitioner and the first respondent/landlord and thus, the revision petitioner claims to be the lawful tenant. The revision petitioner states that he is paying the monthly rent regularly from the date of his occupation as tenant.

3. Subsequently, a lease agreement was entered into between the revision petitioner and the first respondent/landlord for a period of 5 years. The lease agreement was registered as Document No.1351 of 2021 dated



12.04.2021 before the SRO Sembiam, Chennai, in respect of the ground floor of the said premises. The revision petitioner states that he paid an interest free security deposit of Rs.2,00,000/- (Rupees Two Lakhs only) to the respondent/landlord. While so, the 2nd respondent Bank had issued Section 13 (2) notice dated 23.04.2021 under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (hereinafter referred to as the 'SARFAESI ACT'). The first respondent/landlord informed the revision petitioner that he had offered the entire premises including the leased premises as security to the 2nd respondent/Bank for a loan in favour of M/s.M.M.S.Iron Corporation/third respondent herein, which is an entity run by the grandson of the first respondent/landlord.

4. The learned counsel for the revision petitioner contended that the revision petitioner is a lawful tenant and unconnected with the loan transaction between the first respondent/landlord and the 2nd respondent/Bank. In respect of his tenancy right, he filed a Civil Suit for Declaration to declare that the plaintiff should not be evicted except in accordance with the procedure established by law and for permanent injunction, restraining the defendants 1 to 3 and his servants, agents etc.,



from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property till evicted except due process of law.

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5. The suit instituted by the revision petitioner was scrutinized and posted before the I Assistant City Civil Court, Chennai, for deciding the maintainability of the Civil Suit. The trial Court held that the suit is not entertainable in view of Section 17 (4A) Read with Section 34 of SARFAESI ACT. Liberty is granted to the revision petitioner to approach the competent Forum for redressal of his grievances.

6. In the said context, the learned counsel for the revision petitioner reiterated that the similar issue was considered by this Court in the case of ***M.Ezhilmaran Vs. K.Karunanidhi and others dated 17.12.2021***, wherein this Court relying on the judgment of the Hon'ble Supreme Court of India in the case of ***Vishal N.Kalsaria Vs. Bank of India and others, reported in 2016 (4) L.W.7***, held that the suit for Declaration is maintainable.

7. The observations made by the Hon'ble Apex Court of India in the case of ***Vishal Kalsaria (cited supra)*** is that Civil Courts have jurisdiction to try the suit filed by a lawful tenant to save himself from eviction except by



following due process of law even though proceeding under the SARFAESI ACT was initiated by the Bank. Further, a person can approach a Civil Court and seek a declaratory or other relief in respect of secured asset since such relief cannot be granted by the Debts Recovery Tribunal or the Appellate Tribunal as they are not Civil Courts. Therefore, it cannot be held that the jurisdiction of the Civil Court is completely barred by law and as such, any suit filed by a lawful tenant and any person who claims declaratory relief over the secured asset, can very well entertained by a Civil Court.

8. The learned counsel for the revision petitioner relied on the observations made by the Apex Court in Paragraph 24 of ***Vishal Kalsaria case (cited supra)***, which reads as under:

“24. When we understand the factual matrix in the backdrop of the objectives of the above two legislations, the controversy in the instant case assumes immense significance. There is an interest of the Bank in recovering the non-performing asset on the one hand, and protecting the right of the blameless tenant on the other. The Rent Control Act being a social welfare legislation, must be construed as such. A landlord cannot be permitted to do indirectly what he has been barred from doing under the Rent Control Act, more so



when the two legislations, that is the SARFAESI Act and the Rent Control Act operate in completely different fields. While the SARFAESI Act is concerned with non-performing assets of the banks, the Rent Control Act governs the relationship between a tenant and the landlord and specifies the rights and liabilities of each as well as the rules of ejectment with respect to such tenants. The provisions of the SARFAESI Act cannot be used to override the provisions of the Rent Control Act. If the contentions of the learned counsel for the respondent Banks are to be accepted, it would render the entire scheme of all Rent Control Acts operating in the country as useless and nugatory. Tenants would be left wholly to the mercy of their landlords and in the fear that the landlord may use the tenanted premises as a security interest while taking a loan from a bank and subsequently default on it. Conversely, a landlord would simply have to give up the tenanted premises as a security interest to the creditor banks while he is still getting rent for the same. In case of default of the loan, the maximum brunt will be borne by the unsuspecting tenant, who would be evicted from the possession of the tenanted property by the Bank under the provisions of the SARFAESI Act. Under no circumstances can this be permitted, more so in view of the statutory protections to the tenants under the Rent Control Act and also in respect of contractual tenants along with the possession of their properties which shall be obtained with due process of law”.



9. Relying on the above observations made by the Apex Court, which was followed by this Court, the learned counsel for the revision petitioner reiterated that the order passed by the trial Court in the present case is perverse and not in consonance with the settled position of law.

10. Considering the arguments, this Court has to consider the scope and the provisions of the SARFAESI Act. The very purpose and object of the SARFAESI Act is to ensure that the Bank, who granted loan to the borrowers, recover the loan by following the procedures as contemplated under the SARFAESI Act.

11. In the present case, the revision petitioner admittedly is a tenant and the first respondent is the landlord, who borrowed loan from the 2nd respondent Bank by mortgaging the subject property. Since the borrower committed default, the 2nd respondent/Bank instituted proceedings under the SARFAESI Act. Notice was issued to the occupant of the premises, who is the revision petitioner, who in turn, independently instituted a suit for Declaration and Permanent injunction.



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12. With reference to the above facts, let us examine the scope of Section 17 (4) (4-A) of the SARFAESI Act, which reads as under:

“17. (1).....

(2).....

(3).....

(4).....

[(4A) Where—

(i) any person, in an application under subsection (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,—

(a) has expired or stood determined; or

(b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under subsection (2) of section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause



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(c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.]”

13. The revision petitioner claims his right as a tenant based on the lease agreement dated 12.04.2021. On the other hand, he says that he is continuing as a tenant based on the oral agreement from the year 2007 onwards. Thus, an inference is to be drawn that the lease agreement was entered into between the revision petitioner and the tenant in the year 2021 for the purpose of creating a legal tenancy ship between the revision petitioner and the first respondent/landlord. Even in such circumstances, Section 17 (4A) (ii) of the SARFAESI Act stipulates that if the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, then the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.

14. Section 17 (4A) (i) empowers the Debt Recovery Tribunal, after



examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy is valid or in force or otherwise.

15. Therefore, the SARFAESI Act confers powers on the Debt Recovery Tribunal to examine the validity of the tenant-landlord relationship and the conditions stipulated in the agreement, if any entered into between the landlord and the tenant, while dealing with the secured assets. When specific power has been conferred on the Tribunal to examine the tenant-landlord relationship and their rights, and further powers are conferred to pass such order as the Tribunal deem fit in accordance with the provisions of the Act, then the aggrieved tenant has to approach the Tribunal for redressal of his grievances.

16. The very purpose and object of the amendment inserted by Act 44 of 2016 to Section 17 of SARFAESI Act is to prevent inconsistency in the matter of passing orders by different Courts. The parties may attempt to abuse the process of law, if they are allowed to institute separate proceedings under the Code of Civil Procedure. When there is a specific



provision under the SARFAESI Act is contemplated and the Bank has already invoked the provisions of the SARFAESI Act and issued notice, then the aggrieved tenant has got a right to approach the Tribunal under the SARFAESI Act for redressal of his grievances.

17. In order to streamline the procedures, for redressal of grievances, the amendment to Section 17 of SARFAESI Act was enacted by Act 44 of 2016 dated 01.09.2016. While so, if the tenant is allowed to institute a separate Suit under the Code of Civil Procedure in a regular Civil Court for a Declaration, then the consequences would be disastrous.

18. The 2nd respondent/Bank filed an application to recover the dues by invoking the provisions of the SARFAESI Act. The 2nd respondent/Bank has taken possession under the SARFAESI Act and they are empowered to deal with the property in the manner contemplated under the SARFAESI Act. In the event of a separate Suit or an order, if any passed by Civil Courts, then there will be conflicting orders and the very purpose and object of the provisions of the SARFAESI Act would be defeated. This exactly is the reason why, the legislatures thought fit and inserted Act 44 of 2016 by introducing Section 17(4-A) of SARFAESI Act. Amended provision is made



specifically to protect the interest of the lawful tenants, who all are in occupation in the secured assets. When there is a specific relief contemplated under the SARFAESI Act for the lawful tenants, they are bound to avail the same, if any grievances exists and for redressal of the same.

19. The very idea of filing a Civil Suit by such tenants cannot be entertained, in view of the fact that the Civil Suit is expressly barred under Section 34 of the SARFAESI Act.

20. Section 34 contemplates 'No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

21. When there is an express bar under Section 34 of the SARFAESI Act, no suit is maintainable under Section 9 of the Code of Civil Procedure. When Section 9 of the Code of Civil Procedure, stipulates that the Courts



shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

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22. In respect of the tenant residing in secured assets, which all are the subject matter of the SARFAESI Act, then Section 34 will operate and therefore, no suit is maintainable, since it is expressly barred under Section 34 of the SARFAESI Act.

23. In the event of entertaining a suit, there is a likelihood of conflicting decisions between the Debt Recovery Tribunal and the Civil Court and in such circumstances, there will not be any scope for enforcement of law and any of the parties may take undue advantage for the purpose of frustrating the entire proceedings either under the SARFAESI Act or under the General law. In order to avoid such inconsistency and abuse of process of law, the legislatures inserted amendment by Act 44 of 2016 to Section 17 of the SARFAESI Act. While so, no suit can be entertained, once the Banks invoked the provisions of the SARFAESI Act and the tenants, who all are in occupation of the secured assets, are at liberty to approach the Debt Recovery Tribunal under Section 17 (4-A) of the SARFAESI Act.

24. With reference to the observations made by the Apex Court, it



states about the Declaration. Declaration is a common relief and therefore, the Courts are bound to consider the nature of Declaration sought for in the suit by a person.

25. In the present case, the relief sought for in the plaint is to declare that the plaintiff should not be evicted except in accordance with the procedures established law and to grant permanent injunction, restraining the Bank from interfering with the possession of the plaintiff. Such a relief is directly connected with the provisions of the SARFAESI Act. The very relief sought for by the revision petitioner in the plaint is interconnected and in the event of allowing the suit to be tried, then there is a likelihood of conflicting decisions.

26. For example, if the Civil Court grants an order of permanent injunction against the Bank, restraining them from interfering with the possession of the tenant, then they may not be in a position to deal with the property under the provisions of the SARFAESI Act. Unless they take possession of the property, they cannot auction the property for the purpose of realising the loan amount. Therefore, declaratory suits filed by the persons against secured assets is not maintainable. If the suit is relating to the



provisions of the SARFAESI Act, then no suit is maintainable, in view of the express bar under Section 34 of the SARFAESI Act. Therefore, the general observations of the Hon'ble Supreme Court of India that the declaratory suit is maintainable under the Code of Civil Procedure, may not be applicable with reference to the facts and circumstances of the present case. Thus, the judgment of the Hon'ble Supreme Court of India is of no avail to the revision petitioner, so as to maintain the suit for declaration, not to evict the petitioner from the secured asset.

27. In the case of *M.Ezhilmaran Vs. K.Karunanidhi and others dated 17.12.2021*, which was decided by the High Court of Madras dated 17.12.2021, wherein the appellant was not a lawful tenant and therefore, the order has no application in the present case.

28. At the outset, remedy for a tenant in a secured asset is provided under Section 17 (4-A) of the SARFAESI Act and thus, for redressal of grievances, the tenant aggrieved may approach the Tribunal in the manner contemplated.

29. In view of the facts and circumstances, this Court do not find any



infirmity in respect of the findings made by the trial Court that the suit instituted is not maintainable, in view of the express bar contemplated under Section 34 of the SARFAESI Act.

30. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

23.12.2022

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Index : Yes
Speaking order

To

1. The Judge,
I Assistant City Civil Court,
Chennai.
2. City Union Bank Limited,
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No.24-B, Gandhinagar,
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S.M.SUBRAMANIAM, J.



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