



W.P.(MD)Nos.16622 to 16634 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED :01.08.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
and
THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.P.(MD)Nos.16622 to 16634 of 2022

and

W.M.P(MD)Nos.12036, 12039, 12037, 12038, 12042, 12044, 12040, 12041,
12045, 12047, 12061, 12063, 12052, 12055, 12056, 12057, 12043, 12046,
12053, 12054, 12062, 12064, 12049, 12050, 12058, 12059 of 2022

A.Mohamed Bowmi	... Petitioner in W.P(MD)No.16622 of 2022
V.Balakrishnan	... Petitioner in W.P(MD)No.16623 of 2022
Robert	... Petitioner in W.P(MD)No.16624 of 2022
E.Krishnamoorthi	... Petitioner in W.P(MD)No.16625 of 2022
Ahamadhullah	... Petitioner in W.P(MD)No.16626 of 2022
Pakkeer Mohamed	... Petitioner in W.P(MD)No.16627 of 2022
C.Karuppiah	... Petitioner in W.P(MD)No.16628 of 2022
V.Narayanan	... Petitioner in W.P(MD)No.16629 of 2022
P.Venkateswaran	... Petitioner in W.P(MD)No.16630 of 2022
A.Mohamed Rafeeq	... Petitioner in W.P(MD)No.16631 of 2022
Ibrahim Ali	... Petitioner in W.P(MD)No.16632 of 2022



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M.Dhanasekar

... Petitioner in W.P(MD)No.16633 of 2022

P.Kannan

... Petitioner in W.P(MD)No.16634 of 2022

Vs.

1.The Chief Judicial Magistrate,
Dindigul.

2.Equitas Small Finance Bank Limited,
Represented by its Authorized Officer,
4th Floor, Phase II, Spencer Plaza,
No.769, Mount Road,
Anna Salai,
Chennai – 600 002.

3.M.Boseraja

4.M.Veluchamy

... Respondents in all W.Ps

Common Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order dated 04.07.2022 made in Cr.M.P.No.6484 of 2022 on the file of the first respondent and quash the same and further direct the second respondent to de-seal and restore possession of the tenanted premises viz. Shop occupied by the petitioner in the building bearing Plot No.1/49, Kasimali Nagar, Vathalagundu Road, Dindigul Town, to the petitioner.

(In all W.Ps)

For Petitioner

For Respondents

: Mr.Y.Prakash

: Mr.M.S.Murali for

M/s.R & P Partners



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COMMON ORDER

(Order of the Court was made by **S.S.SUNDAR, J.**)

These writ petitions are filed to quash the order, dated 04.07.2022, passed by the Chief Judicial Magistrate, Dindigul in Cr.M.P.No.6484 of 2022 in the application filed by the second respondent bank under Section 14 of the SARFAESI Act.

2. The petitioners in all these writ petitions claimed that they are tenants under the fourth respondent mortgagor in respect of small portions of the commercial building in Plot No.1/49 of Kasimali Nagar, Vathalagundu Road, Dindigul Town.

3. It is not in dispute that the fourth respondent in the writ petitions is the absolute owner of the entire commercial building consisting of several shops which were taken on lease by the petitioners. The fact that the petitioners in these writ petitions have taken the building on lease long back is not disputed. It is admitted that the commercial building was the subject matter of



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mortgage created by the fourth respondent in favour of the second respondent on 11.02.2021.

4. It is the specific case of the petitioners in these writ petitions that the petitioners were inducted as tenants long before the mortgage. The second respondent bank initiated proceedings against the fourth respondent and the borrowers. It is stated in the petition filed by the bank before the Chief Judicial Magistrate that the equitable mortgage was created in the year 2021 and the Authorised Officer had issued a demand notice on 12.01.2022 under Section 13(2) of the SARFAESI Act. The fact that several tenants are in physical possession of their respective shops was not disclosed in the petition filed under Section 14 of the SARFAESI Act.

5. It is stated in the application that the borrowers and the mortgagor have failed to comply with the payment and that therefore, the application is filed under Section 14 of the SARFAESI Act. Notice to the respondents in the application in CrI.M.P.No.6484 of 2022 was dispensed with by the Chief Judicial Magistrate. It is revealed that the respondent bank has not even intimated the fact that the shops in the building were leased out to several tenants and that the tenants were in physical possession of the property. Since



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the bank has not disclosed the crucial fact that the physical possession was with several tenants who were doing business in their respective tenanted premises, the Chief Judicial Magistrate passed the following order:

“5.Thus, the Inspector of Police, Dindigul Town South Police Station, is required to render all necessary assistance to the petitioner (secured creditor) in taking over possession of the secured assets as described in the petition mentioned schedule of properties.

6. In the result, Tr.B.Gnanavinothan, Enrolment No.MS 1015/2010 Dindigul is appointed as an Advocate Commissioner for taking possession by break open the buildings of the secured assets as mentioned in the schedule property of the petition and to handover the same to the secured creditor / petitioner with assistance of the concerned V.A.O. and S.I. of Police, Dindigul Town South Police Station. The remuneration of the Advocate Commissioner is fixed at Rs.6,000/- and shall be paid directly to the Advocate Commissioner by the petitioner/secured creditor within a week from today. Report by 04.08.2022.”

6. It is now admitted that physical possession was also taken by the respondent bank through the Advocate Commissioner appointed by the Chief



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Judicial Magistrate on 21.07.2022. Hence, the above writ petitions have been

filed by the tenants mainly on the ground that the impugned order without notice to the petitioners is illegal, violative of principles of natural justice and without following the mandatory procedure both under the Statutes and the Rules framed thereunder as interpreted by Courts. It is their contention that their possession is protected by the Rent Control Legislation. While admitting the bank's right to take symbolic possession, it is contended that the respondent bank should compensate them adequately for throwing them out from the tenanted premises unceremoniously in utter disregard and violative of their right to carry on business under Article 19(1)(g) of the Constitution of India.

7. The learned counsel appearing for the petitioners submitted that the respondent bank has purposely suppressed the tenancy for quick possession and hence, they were not impleaded. It is also contended that the order without making them as parties is invalid and unenforceable as against the writ petitioners.

8. The learned counsel also relied upon the judgment of the Honourable Supreme Court in the case of *Vishal N Kalsaria vs Bank Of India & Ors.* reported in **2016 (3) SCC 762** and seek appropriate direction to de-seal



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and restoration of possession.

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9. The learned counsel appearing for the second respondent bank has no quarrel with the judgment of the Honourable Supreme Court in **Vishal N Kalsaria's** case. However, he submitted that there is an amendment that was introduced by Act 44 of 2016. By the said amendment, sub-section 17(4)(A) was introduced.

10. Section 17 of the SARFAESI Act after amendment, reads as follows:

“17. 2[Application against measures to recover secured debts].—(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter,1[may make an application along with such fee, as may be prescribed,]to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:

2[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]



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3[Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.]

4[(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction— (a) the cause of action, wholly or in part, arises; (b) where the secured asset is located; or (c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.]

5[(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

6[(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and



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require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,—

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.]

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

1[(4A) Where—

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of



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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 sub-section (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 (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.]

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application: Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts



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Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.]

11. The learned counsel appearing for the respondent bank submitted that the amendment was subsequent to the judgment of the Honourable Supreme Court and that therefore, it should prevail. Law is well settled that a judgment of Hon'ble Supreme Court cannot be rendered invalid by a legislation, even though the legislation is competent to remove the basis of a judgment of competent Court.



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12. An attempt was made indirectly to infer that the judgment of the Hon'ble Supreme Court in the case of *Vishal N Kalsaria* reported in **2016 (3) SCC 762**, has been removed by the amendment and that therefore, by virtue of the amendment, the direction of the Hon'ble Supreme Court in *Vishal N Kalsaria's* case, has lost its significance as a precedent. The learned counsel further submitted that by virtue of the amendment, the only remedy available to the petitioners/tenants is to approach the Debts Recovery Tribunal and establish their right.

13. It is also submitted by the learned counsel appearing for the respondent bank that the writ petitions are liable to be dismissed as not maintainable on two grounds. Firstly, by virtue of the amendment, the petitioners have an effective alternative remedy by way of approaching the Tribunal. Secondly, the learned counsel submitted that the bank will lose the opportunity of defending the application citing the limitation as a bar after referring to Section 17(1) of the SARFAESI Act, where any person aggrieved by any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor, has to file an application within 45 days from the date on which such measure has been taken.



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14. This Court is unable to countenance any of the submissions made

by the learned counsel appearing for the respondent bank. First of all, the learned counsel appearing for the respondent bank has failed to note that the judgment of the Hon'ble Supreme Court in *Vishal N Kalsaria's* case, is respected by introducing an amendment so that a tenant in possession may get remedy after establishing that the tenancy does not fall under sub-clause (a) or sub-clause (b) or sub-clause(c) or Sub-clause(d) of clause (i) of Sub-Section 4 A of Section 17 of SARFAESI Act. The facts that are set out in the judgment of the Hon'ble Supreme Court would show that the respondent bank had filed an application before the Chief Metropolitan Magistrate under Section 14 of the SARFAESI Act for securing possession of the mortgaged properties which were in actual possession of the appellant before the Honourable Supreme Court, who was a tenant. It is to be noted that the tenant had filed a Rent Suit before the Court of Small Causes, Bombay and the Rent Control Court passed an ad-interim order of injunction in favour of the tenant restraining the bank from obstructing the possession of the appellant over the property which is the subject matter of the proceedings.

15. It is noticed by the Hon'ble Supreme Court that the learned Chief Metropolitan Magistrate has held that it is not open to the Court to grant an



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injunction under the relevant provisions of the Rent Control Act when the secured creditor initiated action under Section 14 of the SARFAESI Act, to recover possession of the secured asset and recover the loan amount by selling the same in public auction. After referring to several judgments of the Hon'ble Supreme Court and the provisions of the relevant Statutes, particularly, the object and Scheme of the SARFAESI Act, the Hon'ble Supreme Court has held as follows:

“37.It is a settled position of law that once tenancy is created, a tenant can be evicted only after following the due process of law, as prescribed under the provisions of the Rent Control Act. A tenant cannot be arbitrarily evicted by using the provisions of the [SARFAESI Act](#) as that would amount to stultifying the statutory rights of protection given to the tenant. A non obstante clause ([Section 35](#) of the SARFAESI Act) cannot be used to bulldoze the statutory rights vested in the tenants under the Rent Control Act. The expression ‘any other law for the time being in force’ as appearing in [Section 35](#) of the SARFAESI Act cannot mean to extend to each and every law enacted by the Central and State legislatures. It can only extend to the laws operating in the same field.

38. Interpreting the non obstante clause of the [SARFAESI Act](#), a three Judge Bench of this Court in [Central Bank of India v. State of Kerala](#) has held as under:



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*“108. **The DRT Act** and Securitisation Act were enacted by Parliament in the backdrop of recommendations made by the Expert Committees appointed by the Central Government for examining the causes for enormous delay in the recovery of dues of banks and financial institutions which were adversely affecting fiscal reforms.*

109. The committees headed by Shri T. Tiwari and Shri M. Narasimham suggested that the existing legal regime should be changed and special adjudicatory machinery be created for ensuring speedy recovery of the dues of banks and financial institutions. Narasimham and Andhyarujina Committees also suggested enactment of new legislation for securitisation and empowering the banks etc. to take possession of the securities and sell them without intervention of the Court.

*110. **The DRT Act** facilitated establishment of two-tier system of tribunals. The tribunals established at the first level have been vested with the jurisdiction, powers and authority to summarily adjudicate the claims of banks and financial institutions in the matter of recovery of their dues without being bogged down by the technicalities of the Code of Civil Procedure. The Securitisation Act drastically changed the scenario inasmuch as it enabled banks, financial institutions and other secured creditors to recover their dues without intervention of the Courts or Tribunals. The Securitisation Act also made provision for registration and regulation of securitisation/reconstruction companies, securitisation of financial assets of banks and financial institutions and other related provisions.*

111. However, what is most significant to be noted is that there is no provision in either of these enactments by which first charge has been created in favour of banks,



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financial institutions or secured creditors qua the property of the borrower.

112. Under Section 13(1) of the Securitisation Act, limited primacy has been given to the right of a secured creditor to enforce security interest vis-à-vis [Section 69](#) or [Section 69A](#) of the Transfer of Property Act. In terms of that sub-Section, a secured creditor can enforce security interest without intervention of the Court or Tribunal and if the borrower has created any mortgage of the secured asset, the mortgagee or any person acting on his behalf cannot sell the mortgaged property or appoint a receiver of the income of the mortgaged property or any part thereof in a manner which may defeat the right of the secured creditor to enforce security interest. This provision was enacted in the backdrop of Chapter VIII of Narasimham Committee's Second Report in which specific reference was made to the provisions relating to mortgages under the [Transfer of Property Act](#).

113. In an apparent bid to overcome the likely difficulty faced by the secured creditor which may include a bank or a financial institution, Parliament incorporated the non obstante clause in [Section 13](#) and gave primacy to the right of secured creditor vis a vis other mortgagees who could exercise rights under [Sections 69](#) or [69-A of the Transfer of Property Act](#). However, this primacy has not been extended to other provisions like Section 38-C of the Bombay Act and Section 26-B of the Kerala Act by which first charge has been created in favour of the State over the property of the dealer or any person liable to pay the dues of sales tax, etc.

.....

116. The non obstante clauses contained in [Section 34\(1\)](#) of the DRT Act and Section 35 of the Securitisation Act give overriding effect to the provisions of those Acts only if there is anything inconsistent contained in any other law or instrument having effect by virtue of any other law. In other words, if there is no provision in the other enactments which are inconsistent with the [DRT Act](#) or Securitisation Act, the



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provisions contained in those Acts cannot override other legislations.” (emphasis supplied))

39. *If the interpretation of the provisions of [SARFAESI Act](#) as submitted by the learned senior counsel appearing on behalf of the Banks is accepted, it would not only tantamount to violation of rule of law, but would also render a valid Rent Control statute enacted by the State Legislature in exercise of its legislative power under [Article 246 \(2\)](#) of the Constitution of India useless and nugatory. The Constitution of India envisages a federal feature, which has been held to be a basic feature of the Constitution, as has been held by the seven Judge Bench of this Court in the case of [S.R. Bommai & Ors. v. Union of India](#), wherein Justice K. Ramaswamy in his concurring opinion elaborated as under:*

“247. Federalism envisaged in the Constitution of India is a basic feature in which the Union of India is permanent within the territorial limits set in [Article 1](#) of the Constitution and is indestructible. The State is the creature of the Constitution and the law made by Articles 2 to 4 with no territorial integrity, but a permanent entity with its boundaries alterable by a law made by Parliament. Neither the relative importance of the legislative entries in Schedule VII, Lists I and II of the Constitution, nor the fiscal control by the Union per se are decisive to conclude that the Constitution is unitary. The respective legislative powers are traceable to Articles 245 to 254 of the Constitution. The State qua the Constitution is federal in structure and independent in its exercise of legislative and executive power. However, being the creature of the Constitution the State has no right to secede or claim sovereignty. Qua the Union, State is quasi-federal. Both are coordinating institutions and ought to exercise their respective



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powers with adjustment, understanding and accommodation to render socio-economic and political justice to the people, to preserve and elongate the constitutional goals including secularism.

248. The preamble of the Constitution is an integral part of the Constitution. Democratic form of Government, federal structure, unity and integrity of the nation, secularism, socialism, social justice and judicial review are basic features of the Constitution.” (emphasis supplied)

40. In view of the above legal position, if we accept the legal submissions made on behalf of the Banks to hold that the provisions of [SARFAESI Act](#) override the provisions of the various Rent Control Acts to allow a Bank to evict a tenant from the tenanted premise, which has become a secured asset of the Bank after the default on loan by the landlord and dispense with the procedure laid down under the provisions of the various Rent Control Acts and the law laid down by this Court in catena of cases, then the legislative powers of the state legislatures are denuded which would amount to subverting the law enacted by the State Legislature. Surely, such a situation was not contemplated by the Parliament while enacting the [SARFAESI Act](#) and therefore the interpretation sought to be made by the learned counsel appearing on behalf of the Banks cannot be accepted by this Court as the same is wholly untenable in law.



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41. We are unable to agree with the contentions advanced by the learned counsel appearing on behalf of the respondent Banks.

42. In view of the foregoing, the impugned judgments and orders passed by the High Court/Chief Metropolitan Magistrate are set aside and the appeals are allowed. We further direct that the amounts which are in deposit pursuant to the conditional interim order of this Court towards rent either before the Chief Metropolitan Magistrate/Magistrate Court or with the concerned Banks, shall be adjusted by the concerned Banks towards the debt due from the debtors/landlords in respect of the appellants in these appeals. The enhanced rent by way of conditional interim order shall be continued to be paid to the respective Banks, which amount shall also be adjusted towards debts of the debtors/landlords. All the pending applications are disposed of.”

16. The Hon'ble Supreme Court has taken a conscious decision that the provisions of the SARFAESI Act, cannot override the provisions of the Rent Control Acts to allow the Bank to evict the tenants from the tenanted premises without resorting to the provisions of the Rent Control Act.



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17. It is evident that by amendment, now remedy is provided to the tenant to establish his independent statutory right to protect his possession after satisfying the Tribunal that the tenancy under which he seeks protection does not fall in any of the Sub-Clauses (a) to (d) of Sub-Section 4A of Section 17 of SARFAESI Act. In the present case, the secured assets include RCC shop buildings. The shop buildings were leased out to many tenants long before the mortgage which was created on 11.02.2021. Despite a lengthy counter affidavit is filed, the respondent bank did not mention any fact questioning the independent right of tenants under the Rent Control Legislation. It is not the case of respondent bank that the tenancy was created to defeat the right of bank contrary to the term of mortgage. Lease is a transfer of right in immovable property. A lessee is entitled to protect his right under Transfer of Property Act and the Rent Control Legislation even against a mortgagee whose right is subject to the transfer of interest in favour of tenant. The tenancy is not terminated. When the Act does not provide a mechanism to deal with a situation as in the present case, this Court is of the view that the bank if they do not disclose the possession of tenants, it can only take symbolical possession and on such possession being recorded, the tenancy shall be deemed to be attorned to enable the secured creditor to step in the shoes of the mortgagor.



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18. In the present case, the respondent bank has made an attempt to evict the tenants without following due process of law. It is to be noted that the bank is aware of the fact that the tenants were in physical possession of the property. Strangely, none of the tenants were impleaded as parties before the Chief Judicial Magistrate in the application filed by the bank under Section 14 of the Act.

19. No doubt, the respondent bank has given the particulars which are required to be submitted by the respondent bank in the application filed under Section 14 of the Act. However, this Court is of the view that the respondent bank who is aware of the tenants' possession should also disclose the fact that the property is in the physical possession of the tenants in the application filed under Section 14 of the Act. Even though it is not a statutory requirement to disclose such tenancy, the tenancy is saved by Rent Control Act if the tenancy does not fall under any of the sub-clauses (a) to (d) of Sub-Section 4A of Section 17. The tenancy is protected by amendment. If the bank wants to take physical possession of the property, either they should file an application before the Debts Recovery Tribunal to establish that the tenants do not fall under clauses (a) to (d) of Sub-Section 4A of Section 17 or they can take symbolic possession. In other words, it is open to the bank to approach the Tribunal



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under Section 13 of the SARFAESI Act that the tenants have no independent

right. Only after establishing the rights of the respondent bank to take possession and the tenants who are in possession of the property have no independent right as against the secured creditor, it may be open to the bank to approach the Chief Judicial Magistrate under Section 14 of the Act. If it is admitted or the secured creditor has no tangible material to defend the independent right of tenants or their claim under the tenancy agreement is not contrary to the mortgage and does not fall under clauses (a) to (d) of Sub-Section 4A of Section 17 of the SARFAESI Act, it is not open to the bank to file an application under Section 14 of the SARFAESI Act, to get physical possession even though they may seek symbolical possession.

20. In the present case, the possession was taken from the petitioners without notice to them as a result of an unethical and unfair attitude of respondent bank. The tenants who are entitled to have the protection of the Rent Control Act, are deprived of their valuable right. In other words, their Fundamental right to carry on business is also affected. It is pertinent to mention that no prior notice was given to the tenants so that the tenants may filed an application as may be permissible in view of Section 17(4A) of the SARFAESI Act.



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21. Therefore, this Court is of the view that the order of the learned

Chief Judicial Magistrate, in the proceedings under Section 14 of the Act without impleading the tenants and without an adjudication of rights of tenants by the Tribunal as contemplated under Section 17(4A) of the Act, is unsustainable. The arguments of the learned counsel appearing for the respondent bank are unsustainable as the action taken by the respondent bank by throwing out the tenants is an unforgiveable act in utter disregard to the fundamental rights of the tenants to carry on business as tenants in lawful possession of the property.

22. The learned counsel appearing for the respondent bank has given a list of thirteen tenants. From the details furnished by the respondent bank, it could be seen that the tenants were carrying on business like selling of rice and sweets or doing printing press or other business like Fancy store etc.

23. In view of the above, the writ petitions are allowed and the order passed by the Chief Judicial Magistrate should be understood as one recognising the symbolic possession of the premises by the bank. Therefore, from now the petitioners in each writ petition has to remit the rent to the bank and not to the mortgagor or the borrower.



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24. Having regard to the nature of the business doing by the writ petitioners and the fact that the petitioners were out of possession by unlawful eviction, the act of the respondent bank is in violation of writ petitioners' fundamental rights, this Court is of the view that the petitioners should be adequately compensated not only for the physical dispossession but also the damages caused to the reputation and other mental turmoil the petitioners had undergone. During this unholy process of eviction, the petitioners had lost their business. Therefore, this Court directs the second respondent to de-seal and hand-over possession to the petitioners forthwith. Apart from handing over physical possession of the premises to the respective petitioners, the second respondent bank is directed to pay a sum of Rs.10,000/- each to the petitioners as compensation, within a period of two weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected Miscellaneous Petitions are closed.

[S.S.S.R., J.] [S.S.Y., J.]
01.08.2022

Index : Yes / No
pm

To:

The Chief Judicial Magistrate,
Dindigul.



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and
S.SRIMATHY, J.
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