



W.P.(MD)Nos.20984 and 20985 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.09.2022

CORAM

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

W.P.(MD)Nos.20984 and 20985 of 2022
and
W.M.P.(MD)Nos.15231 and 15237 of 2022

S.Babu ... Petitioner in W.P.(MD) No.20984/2022

S.Mohamed Ibrahim ... Petitioner in W.P.(MD) No.20985/2022

Vs.

1.The Authorised Officer,
Indian Bank,
Srirangam Branch,
Trichy.

2.K.Sumathy

3.Devendran ... Respondents in both the writ petitions

Common Prayer: Writ Petitions filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari, to call for records in Crl.M.P.No.272 of 2022 passed by the learned Chief Judicial Magistrate, Trichy, dated 17.08.2022 and quash the same.

For Petitioner in both : Mr.N.Shanmuga Selvam
the Writ Petitions

For 1st Respondents in : Mr.R.Pandivel,
both the Writ Petitions Standing Counsel

* * *



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ORDER

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

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Challenging the order of learned Chief Judicial Magistrate, Trichy, dated 17.08.2022, in the application filed by the first respondent under Section 14 of SARFAESI Act, in Cr.M.P.No. 272 of 2022, the above Writ Petitions are filed by the petitioners, who came to be in possession of the property under the unregistered documents titled “ஒத்தி பத்திரம்”.

2. Heard Mr.N.Shanmuga Selvan, learned counsel for the petitioner and Mr.R.Pandivel, learned Standing Counsel for the 1st respondent in both the Writ Petitions. By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself.

3. It is stated that the petitioner in these writ petitions have entered into agreements with the mortgagor on the following terms:-

(a) The lessee is entitled to be in possession till the lessor/mortgagor repay the amount, which the lessee had given to the mortgagor.



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(b) The rent shall be adjusted with the interest payable by the mortgagor to the lessee.

(c) The time given to the mortgagor to pay the amount and get back possession is two years.

4. The property, which is the secured asset, was mortgaged with the first respondent Bank long prior to the lease document dated 01.03.2021 and 18.07.2019 respectively. The grievance of the petitioners are that the respondent bank has obtained an order behind the back of the petitioners, who are in possession.

5. This Court while interpreting Sub-Section 4A of Section 17 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, has upheld the independent right of tenants under the Rent Control Legislation where the tenancy is prior to the mortgage. However, the judgment of Hon'ble Supre Court in ***Vishal N Kalsaria*** reported in ***2016 (3) SCC 762***, may not be applied in this case.



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6. Unlike a case where a tenant has been inducted prior to the mortgage, the petitioners in these writ petitions plead lease after the mortgage. Therefore, it is open to the petitioners to establish their right as contemplated under Section 4-A of Section 17 of SARFAESI Act, 2002. Unless the petitioners establish that they do not fall under claim (a), (b), (c) and (d) of sub-section 4-A of Section 17, they may not claim any independent right as tenant.

7. In the present case, this Court is unable to find any independent right that is available to the petitioners as tenants to claim protection from dispossession as against the mortgagee. When there is a dispute with regard to the tenancy and the independent right of tenant, the tenant has to establish his/her right under the Rent Control Legislation. They may file applications under Section 17 of the SARFAESI Act to establish that as independent tenants they are entitled to protection under the Rent Control Legislation. However, when the petitioners admit that the tenancy was created after the mortgage they cannot resist dispossession merely on the basis of the agreements they had with the mortgagor, which was entered after the property was secured by equitable mortgage in favour of the respondent bank. They may



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have right under the agreements as against the mortgagor/lessor, however, on the strength of such documents of lease, they cannot enforce their right against the mortgagee. It is true that the petitioners may have a right in the immovable property. However, unless the petitioners establish that the mortgagor was given the right to create lease as per the loan agreement or the mortgage, this Court cannot hold in favour of the petitioners. However, they may establish their right by way of filing applications under Section 17 of SARFAESI Act, 2002 after showing that their tenancy does not fall under (a), (b), (c) and (d) of sub-section 4-A of Section 17.

8. Learned counsel appearing for the petitioners has requested this Court to grant interim order till such time the applications to be filed by the petitioners are decided by the Debts Recovery Tribunal at Madurai. Such an order cannot be granted.

9. In view of the above, with liberty preserved to the petitioners to approach the Debts Recovery Tribunal by making appropriate applications under Section 17 of the SARFAESI Act, 2002, these Writ Petitions are dismissed. The respondent Bank shall not initiate coercive action to take physical possession of the



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property for a period of two weeks from the date of receipt of a copy of this order to enable the petitioner to approach the Tribunal.

When such applications are filed under Section 17 of the SARFAESI Act, it is open to the respondent bank to raise any other defence available to the bank in terms of the mortgage created by the bank. No costs. Consequently, connected miscellaneous petitions are also dismissed.

[S.S.S.R., J.] [S.S.Y., J.]
02.09.2022

Index : Yes / No
sj

To

1.The Chief Judicial Magistrate,
Tiruchirappalli.



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S.S.SUNDAR, J.

and

S.SRIMATHY, J.

sj

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