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W.P.No.10849 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2023

CORAM :

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

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.10849 of 2023

S.Shanmugapriya

.. Petitioner

Vs

1.M/s.Thausi Export,
Prop. K.Thulasilingam,
No.8/1A, Anna Street,
Opp. Singamethai,
Salem-636 001.

2.T.Hema Maheswari

3.K.Tulasingam

4.T.Poovazhagi

5.Canara Bank,
rep. by its Authorized Officer/Chief Manager
Praveen Kumar,
Salem Fort Main Branch,
Salem District.

6.R.Sivaranjan

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the records of impugned order passed by the Chief Judicial Magistrate,



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Salem in Crl.M.P.No.1182 of 2022 dated 02.03.2023 and quash the same and consequently directing the 5th and 6th respondents not to take coercive steps under SARFAESI Act, 2002 to evict the petitioner from the property bearing New Door No,3/68, 2nd Agraharam, Salem Town, Salem District, without returning the petitioner's rental advance amount of Rs.25,00,000/-.

For the Petitioner : Mr.N.Vijaya Basker

ORDER

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

S.Shanmugapriya, wife of Sathiyakumar, a young women entrepreneur, running a hotel under the name and style of "Sri Ranga Vilas Hotel, in the property owned by respondents 1 to 4/borrowers, which was leased out to her, has filed this writ petition seeking issuance of a writ of certiorarified mandamus to call for the records of impugned order passed by the Chief Judicial Magistrate, Salem, in Crl.M.P.No.1182 of 2022 dated 02.03.2023 and quash the same and consequently direct respondents 5 and 6 not to take coercive steps under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for brevity, "*the Act*"] to evict the petitioner from the property bearing New Door No,3/68, 2nd Agraharam, Salem Town, Salem District,



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without returning the petitioner's rental advance amount of Rs.25,00,000/-.

2. Mr.N.Vijaya Basker, learned counsel for the petitioner, would submit that the property in question, which was leased out to the petitioner on 28.6.2021, is being used by the petitioner for running a hotel and during the currency of the lease period the learned Chief Judicial Magistrate, Salem, vide order dated 2.3.2023 passed in CrI.M.P.No.1182 of 2022, allowed the application filed by the fifth respondent/secured creditor under Section 14 of the Act, without arraying the petitioner as a party to the proceedings and, therefore, the said order dated 2.3.2023 is liable to be set aside.

3. Learned counsel for the petitioner further submitted that the petitioner has not committed any default in payment of the monthly rent and had rather invested huge amount for establishing the hotel in form of furniture, interior decoration, electrical fittings, water pipes, etc., but without even granting breathing time to make alternative arrangement, the petitioner has been directed to vacate



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and handover the possession of the property in question to enable the sixth respondent, who is the auction purchaser, to take possession of the property in question.

4. Learned counsel for the petitioner submitted that since the proceedings under the Act initiated by the fifth respondent/secured creditor has come to an end with the registration of the sale certificate in favour of the sixth respondent, the Debts Recovery Tribunal does not have jurisdiction to entertain the application filed by the petitioner and, therefore, the petitioner has been advised to file the present writ petition.

5. At the outset, it is apposite to refer to Section 17 of the Act, which reads as under:

"17. Application against measures to recover the secured debts.

(1) to (4) ...

(4-A) Where--

*(i) **any person, in an application under sub-section (1), claims any tenancy or leasehold***



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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 (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."

[emphasis supplied]



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6. Section 17 of the Act clearly stipulates that any person aggrieved by the action initiated by the secured creditor under the provisions of the Act can take out an application under Section 17 of the Act before the Debts Recovery Tribunal. That apart, Section 17(4-A) of the Act makes it abundantly clear that any person, who claims any tenancy or leasehold rights upon the secured asset, can file an application before the Debts Recovery Tribunal which has the jurisdiction to examine what is the effect of lease or tenancy. Clause (ii) of Section 17(4-A) of the Act stipulates that if the Debts Recovery Tribunal is satisfied that the tenancy right or leasehold right claimed in secured asset falls within sub-clause (a), (b), (c) and (d) of Clause (i) of Section 17(4-A) of the Act, then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debts Recovery Tribunal has the power to pass such order as it deems fit. In the case on hand, it is the specific case of the petitioner that the tenure of lease is still subsisting and even for the preceding month, she had paid lease amount to the sixth respondent/auction purchaser. Therefore, the



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petitioner ought to have approached the Debts Recovery Tribunal seeking appropriate relief.

7. In view of the statutory prescription in Section 17 of the Act, we do not find any merit in the aforesaid submissions made by learned counsel for the petitioner. However, it is made clear that if the petitioner files an application before the Debts Recovery Tribunal, it shall be considered on merits and in accordance with law.

For the foregoing reasons, the writ petition is dismissed. There will be no order as to costs. Consequently, W.M.P.Nos.10770 and 10771 of 2023 are closed.

(T.R., ACJ.) (D.B.C., J.)
11.04.2023

Index : No
Neutral Citation : No
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To:
The Authorized Officer/Chief Manager
Canara Bank, Salem Fort Main Branch,
Salem District.



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THE HON'BLE ACTING CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.

(sasi)

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