



WP No.25217 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B. BALAJI

WP No.25217 of 2023

Mr.Surrender Ethira

...

Petitioner

versus

The Authorized Officer,
Axis Bank Ltd, Retail Assists Centre,
No.6A, Centennian Square,
2nd Floor, Dr.Ambetkar Road,
Kodambakkam, Chennai- 600 024.

...

Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorarified Mandamus, to call for the entire records pertaining the issuance of impugned order Crl M.P.No.6028 of 2020 dated 05.03.2020 passed by the Learned C.M.M. Court, Egmore pertaining to take physical possession of the subject property and quash the same, consequently directing the respondent herein not to bring any further proceedings in future and pass orders.

For Petitioner

: Mr.A.D.Anarthanan



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ORDER

(Order of the Court was made by *D.KRISHNAKUMAR, J.*)

This Writ petition has been filed challenging the impugned order passed by the learned Chief Metropolitan Magistrate, Egmore, Chennai in CrI.M.P.No.6028 of 2020 dated 05.03.2020 pertaining to taking of physical possession of the petitioner's property.

2. Brief facts of the case

2.1 The case of the petitioner is that he purchased the subject property on 31.01.2011 and he is the absolute owner of the said property from the date of purchase. The respondent bank offered loan to the petitioner, in the event of the petitioner furnishing sufficient valuable property documents as security. To avail the said loan, the petitioner executed a Memorandum of Deposit of Title Deed to and in favour of the respondent bank and handed over the entire documents of title deed of the subject property. On receiving the said documents, the respondent bank disbursed a sum of Rs.71,55,000/- and a sum of Rs.35,79,115/- vide Loan Account Nos.PHR008200890113 and LPR008200903862, respectively.



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2.2. Since the petitioner defaulted in paying the EMIs for the loan availed from the respondent bank, the respondent bank was constrained to classify the defaulted loan account as 'Non-performing Asset' with effect from 09.01.2018 and issued a demand Notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as, 'the SARFAESI Act, 2002) dated 30.01.2018 calling upon the petitioner to pay the entire dues for a sum of Rs.69,03,088/- and a sum of Rs.4,15,194/- respectively, totaling a sum of Rs.73,18,282/- as on 31.01.2018, within a period of 60 days from the date of receipt of the said demand notice.

2.3. In the meanwhile, the respondent bank has approached the Learned Chief Metropolitan Magistrate Court, Egmore in Crl.M.P.No.6028 of 2020, seeking appointment of an Advocate Commissioner to take possession of the petitioner's premises. By order dated 05.03.2020, the Learned Chief Metropolitan Magistrate Court, Egmore, appointed an Advocate Commissioner to take physical possession of the subject property, and the petitioner came to know about the said fact on receiving a notice dated 25.07.2023 from the



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Advocate Commissioner, informing the petitioner to vacate the premises on or before 31.07.2023.

2.4. According to the petitioner, he approached the respondent bank and sought some more time to settle the entire payment since the impugned order of the learned Chief Metropolitan Magistrate Court, Egmore, was obtained by the respondent bank on 05.03.2020. But the request made by the petitioner was negated by the respondent bank. According to the petitioner, the property is worth Rs.1,50,00,000/-; whereas his liability towards the bank is only a few lakhs of rupees.

2.5. According to petitioner, sufficient time was not granted by the respondent bank to pay the entire amount. On the aforesaid ground, he has challenged the order of the learned Chief Metropolitan Magistrate Court, Egmore, passed under Section 14 of the SARFAESI Act, 2002 before this Court.

3. Learned Counsel for the petitioner would submit that a notice under Section 13(4) of the SARFAESI Act, 2002, has not been served to the petitioner. Therefore, he is not in a position to approach the



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appropriate forum.

4. We have considered the submissions made by the learned counsel for the petitioner.

5. This Court posed a question to the learned counsel for the petitioner as to whether the petitioner is ready to give an undertaking for settlement of the said amount, as stated in the affidavit, within the time stipulated. However, the learned counsel for the petitioner was not in a position to answer positively.

6. We are not inclined to entertain the contentions raised by the petitioner, when there is a provision under Section 17 of the SARFAESI Act, to seek his remedy before the appellate authority.

7. The issue has already been decided by the Hon'ble Supreme Court in the case of **V. Noble Kumar vs The Authorized Officer reported in (2013) 9 SCC 620**, wherein it was held that challenge to the order passed under Section 14 of the SARFAESI Act, 2002, could not be entertained when there is a remedy available under Section 17 of the SARFAESI Act, 2002, to approach before the



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appellate authority.

8. In the light of the aforesaid discussion and the decision cited supra, if the petitioner is having any grievance, there is a remedy available to him to approach the appellate authority. Therefore, we are not inclined to entertain the writ petition. It is open to the petitioner to approach the appellate authority under the provisions of the SARFAESI Act, within a period of two weeks from the date of receipt of a copy of this order.

9. With the above liberty, the writ petition stands dismissed. There will be no order as to costs. Consequently, WMP No.25217 of 2013, is closed.

[D.K.K., J.] [P.B.B., J.]
28.08.2023

Index : Yes/No
Neutral Citation : Yes/No
mrn

Issue Order Copy on 29.08.2023



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To
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