



W.P.No.29940 of 2023

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.29940 of 2023

S.Nithin

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Petitioner

Vs.

1. M/s.Reliance Assets Reconstructions Co. Ltd.  
Having its Registered Office at 11<sup>th</sup> Floor  
North Side, R.Tech Park, Western Express  
Highway, Goregaon (East) Mumbai – 13  
Rep. by its Authorized Officer.

2. M/s.Reliance Assets Reconstructions Co. Ltd.  
Having its Branch Office at 6<sup>th</sup> Floor  
Khivraj Complex, No.477-482, Anna Salai  
Nandanam, Chennai 600 035  
Rep. by its Assistant Vice President, Prabhu.

3. City Union Bank Ltd.  
Having its Registered Office at 149  
TST Big Sreet, Kumbakonam 612 001  
Rep. by its Administrative Officer.

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Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari, calling for the records pertaining to the impugned possession notice dated 05.09.2023 issued by the respondent 1, which notice was issued beyond the period of limitation as prescribed under the SARFAESI Act, including of suppression of facts of their earlier possession notice dated 20.11.2020 and the various demand notices issued under Section 13(2) of the SARFAESI Act dated 25.06.2014 dated 05.07.2015 and dated 20.08.2020 by the first respondent without recalling their earlier notices issued under Section 13(2) of the Act, 25.06.2014 and 05.07.2015 dated 20.08.2020 and the possession notice dated 20.11.2020 and quash the impugned possession notice dated 05.09.2023.

For the Petitioner : Mr.V.Jayachandran

ORDER  
(Made by the Hon'ble Chief Justice)

Heard Mr.V.Jayachandran, learned counsel for the petitioner.

2. The petitioner is challenging the notice issued under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [hereinafter referred to as "the SARFAESI Act"].

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3. Learned counsel for the petitioner submits that the petitioner is neither the borrower nor the guarantor for the loan. The father and mother of the petitioner mortgaged the property, however, the Bank failed to consider that the petitioner has 50% share in the property on the basis of the Will executed by his grandfather. The petitioner's grandfather has received the property by way of partition.

4. Learned counsel for the petitioner further submits that the share of the petitioner could not be sold, that the petitioner has already filed a Civil Suit bearing O.S.No.1876 of 2014 for injunction. The Bank is also made as a party in the said Suit. The Bank is abusing the provisions of the SARFAESI Act. The petitioner was never served with notice under Section 13(2) of the SARFAESI Act earlier. Even now, the notice under Section 13(2) of the SARFAESI Act was served upon the mother of the petitioner. The mother of the petitioner has died. The said notice was issued upon a dead person.



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5. The petitioner has already filed a Civil Suit. The Bank is also a party to the Civil Suit. We are not here to comment upon the Will, partition deed or any other document. In case the petitioner is aggrieved by any steps taken under the SARFAESI Act, a remedy is available to the petitioner under the SARFAESI Act and/or may take appropriate proceedings before the appropriate forum, in accordance with law. In that event, the contentions of the respective parties are kept open.

6. In the light of that, the writ petition stands disposed of. There will be no order as to costs. Consequently, W.M.P.No.29549 of 2023 is closed.

(S.V.G., CJ.)

(D.B.C., J.)

18.10.2023

Index : Yes/No

Neutral Citation : Yes/No

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AND  
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