



W.P.(MD)No.17807 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2023

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
and
THE HONOURABLE **MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P(MD)No.17807 of 2023
and
W.M.P(MD)No.14867 of 2023

B.Mary

... Petitioner

Vs.

1.The Authorized Officer,
M/s.Cholamandalam Investment & Finance Company Ltd.,
No.2/3, G.V.Towers,
Kochadai,
Madurai – 625 010.

2.B.Dhanapal

... Respondents

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 impugned order dated 11.04.2022 passed by the learned Chief Judicial Magistrate, Madurai in Cr.M.P.No.250 of 2022 and quash the same as illegal and vitiated by fraud and suppression of facts; consequently to direct the 1st respondent to restore the physical possession of the 1st schedule property mentioned in CrI.M.P.No.250 of 2022; situated at Plot No.10, Imayam Nagar West Extension, Kamarajar Street, S.Alankulam, Madurai – 17 to the petitioner.



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For Petitioner :Mr.R.Rajamohan
For 1st respondent :Mr.P.Pethu Rajesh,
Standing Counsel

ORDER

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

Heard the learned counsel for the petitioner and the learned Standing Counsel for the first respondent.

2. This writ petition has been filed by the petitioner seeking for issuance of a Writ of Certiorarified Mandamus, to quash the order of the learned Chief Judicial Magistrate, Madurai in Cr.M.P.No.250 of 2022, dated 11.04.2022, passed in an application filed by the bank under Section 14 of the SARFAESI Act, 2002(hereinafter referred to as “the Act”).

3. Earlier, claiming tenancy, the petitioner has filed a suit in O.S.No.186 of 2012 on the file of the District Munsif Court, Madurai and got an order of interim injunction restraining the defendants from



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interfering with the possession otherwise than due process of law.

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It appears that the said suit was decreed vide judgment and decree dated 23.06.2015. On the basis of the decree obtained by her in a suit for bare injunction, the petitioner has come before this Court stating that the respondent bank cannot proceed to interfere with her possession.

4. It is seen that the respondent bank has initiated action against the landlord for recovery of money and when the proceedings were initiated under the Act, the respondent bank cannot be prevented by a tenant as she has no independent right. Section 17 of the Act, specifically provides a machinery to consider the claim of a tenant. In this case, the tenancy itself appears to be after creation of mortgage. Therefore, it is open to the petitioner to file an application under Section 17 of the Act. In such view of the matter, this writ petition is liable to be dismissed as devoid of merits.

5. At this juncture, the learned counsel for the petitioner states that the possession is taken from the petitioner and the demised premises is under lock and key. Therefore, it is represented that the petitioner may



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be permitted to remove her articles from the demised premises.

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6. In view of the said submission, the petitioner is permitted to make a representation before the respondent bank for removal of articles from the demised premises. On receipt of such representation, the respondent bank is directed to permit the petitioner to remove the goods from the demised premises on a specific day to be fixed by the respondent bank.

With the above observations, this writ petition is disposed of.
No Costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [D.B.C., J.]
24.07.2023

Index : Yes / No

NCC : Yes/No

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S.S.SUNDAR, J.

and

D.BHARATHA CHAKRAVARTHY, J.

pm

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