



C.R.P.(MD)No.2192 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.2192 of 2022
and
C.M.P.(MD)No.10216 of 2022

1.State Bank of India,
Madurai Branch, SARB,
Through its Authorized Officer,
Vinayaga Nagar Branch First Floor,
No.8, Dr.Ambedkar Road, Madurai,
Madurai District.

2.State Bank of India,
Sivakasi Branch,
Through its Branch Manager,
Velaytham Road,
Sivakasi Town, Sivakasi Taluk,
Virudhunagar District.

.. Petitioners

Versus

1.N.Manickam
2.M.Rubesh Jebakumar

.. Respondents

Prayer :- Petition filed under Article 227 of the Constitution of India, to call for the records relating to the order dated 28.09.2022, passed in E.P.No.8 of 2022 in R.C.O.P.No.2 of 2018, by the learned District Munsif, Sivakasi, set aside the same and consequently, dismiss the said E.P.No.8 of 2022.

For Petitioners : Mr.N.Dilipkumar

For R1 : Mr.J.Barathan

For R2 : No Appearance



ORDER

The petitioners are the two branches of State Bank of India. The respondents herein are the landlord and the tenant.

2.The facts on record indicate that the first respondent/landlord had leased out a property to the second respondent for his business purpose. In the said leased premises, the second respondent had kept certain movables, which were hypothecated to the petitioners herein.

3.It appears that the second respondent defaulted in paying the amount to the petitioners herein and therefore, a proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was initiated by the petitioners herein. Initially, the petitioners had also put the leased premises under lock and seal, which came to be interfered with by the Debts Recovery Tribunal, Madurai, in S.A.Nos.270 and 271 of 2014. Eventually, the proceedings initiated by the second respondent against the petitioners have been dismissed on 06.01.2023. Meanwhile, on account of various factors, the second respondent had failed to pay the rent to the first respondent from August 2014. Under these circumstances, the first respondent herein initiated proceedings in R.C.O.P.No.2 of 2018 before the District Munsif Court at Sivakasi, under the provisions of the Tamil Nadu Buildings [Lease and Rent Control] Act, 1960, for



recovering the arrears of rent and evicting the second respondent as also the petitioners. The said R.C.O.P. was allowed on 08.12.2021, whereby the petitioners herein were directed to vacate and deliver the possession of the leased premises to the first respondent herein.

4.At this juncture, it is informed that against the fair and decreetal order dated 08.12.2021, the petitioners Bank have also filed an appeal belatedly with the delay of 39 days. However, it appears that the appeal has not been numbered till date.

5.Meanwhile, on the strength of the fair and decreetal order dated 08.12.2021, passed in R.C.O.P.No.2 of 2018, the first respondent herein filed E.P.No.8 of 2022 under Order XXI Rule 11 of C.P.C. to take delivery of the property through the Court Amin. This has culminated in the impugned order dated 28.09.2022. The impugned order directs delivery of the property by 14.10.2022, wherein the objections of the petitioners were also recorded.

6.The impugned order passed by the Execution Court namely, District Munsif Court at Sivakasi, is challenged by the petitioners primarily on the ground that the petitioners are not in possession of the property and therefore, eviction cannot be ordered against the petitioners. That apart, it is submitted that the petitioners are only interested in the hypothecated machineries, which were kept in the property by



the second respondent/tenant under the lock and key pursuant to the order passed by the Debts Recovery Tribunal, Madurai, on 05.11.2014.

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7.I have considered the arguments advanced by the learned counsel for the petitioners Bank and the learned counsel for the first respondent/landlord.

8. There is no representation on behalf of the second respondent/tenant.

9. In my view, the first respondent/landlord cannot be deprived of possession of the property, which was leased to the second respondent, merely because the hypothecated goods of the second respondent in favour of the petitioners Bank were stored in the leased premises. It would not mean that the petitioners can continue to occupy the property without paying any amounts to the first respondent. The first respondent as the landlord of the property cannot be denied of legitimate rent, which the first respondent would have earned, but for the SARFAESI proceedings initiated against the second respondent.

10. It was always open for the petitioners to have taken delivery of the hypothecated goods to any other premises and left the leased premises free for the Execution Court to order delivery and possession to the first respondent.



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11. In my view, there is no scope for interference against the order passed by the Execution Court particularly, in the light of the fact that the tenant namely, the second respondent has failed to pay the arrears of rent from August 2014. It is made clear that all the issues relating to payment of arrears of usage of the premises is left open to be canvassed by either of the parties in an appropriate proceedings. The petitioners are at liberty to remove the hypothecated goods within a period of 30 days from the date of receipt of a copy of this order, failing which, it is open for the first respondent to take appropriate steps.

12. This Civil Revision Petition stands dismissed with the above observation.

No costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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12.06.2023

To

The District Munsif,
Sivakasi.



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C.SARAVANAN, J.

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Order made in
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