



Crl.R.C. No.363 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

Crl.R.C. No.363 of 2020 &
Cr.M.P. No.2679 of 2020

Kamalaveni

...Petitioner

Vs.

1. IDBI Bank Limited
Represented by its
Deputy General Manager
Mr. Sanjay Kumar
NPA Management Group,
No.115, Anna Salai
Saidapet, Chennai 600 015
2. M/s. Sita Paints Private Limited,
No.26, Halegevadarahalli 2nd Cross
Basaweswara Badavavne,
Rajeswari Nagar, Bangalore 560 098
3. P. Senthil Kamaraj,
Managing Director,
M/s. Sita Paints Private Limited
No.26, Halegevadarahalli 2nd Cross
Basaweswara Badavavne,
Rajeswari Nagar, Bangalore 560 098
4. N.S. Prabakaran,

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Director,
M/s. Sita Paints Private Limited
No.26, Halegevadarahalli 2nd Cross
Basaweswara Badavavne,
Rajeswari Nagar, Bangalore 560 098

5. P. Girija Devi,
W/o. N.S. Prabakaran,
Director,
M/s. Sita Paints Private Limited
No.26, Halegevadarahalli 2nd Cross
Basaweswara Badavavne,
Rajeswari Nagar, Bangalore 560 098

6. S. Gnanasekaran
7. N.S. Jeyamonoharan
8. Nalinikantha
9. T.G. Gnanasekar
10. T. Thanasekar
11. T. Gunasekar

...Respondents

Prayer: Criminal Revision Case filed under Section 397 & 401 Cr.P.C. praying to set aside the order dated 12.11.2019 passed in Cr.M.P.No.4297 of 2018 in Crl.M.P. No.3005 of 2018 in Cr.M.P.No.1446 of 2017 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai 600 008.

For Petitioner	: Mr. A.G. Prabu Kumar
For R1	: Ms. Pavithra Dayalan for Mr. S. Sathyanarayanan
For R7	: Mr. M. Kempuraj

ORDER



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Challenging the orders passed in Cr.M.P. No.4297 of 2018 in Crl.M.P. No.3005 of 2018 in Cr.M.P. No.1446 of 2017 on the file of the Chief Metropolitan Magistrate Court, Egmore, Chennai 600 008, the present Criminal Revision Case is filed.

2. The brief facts of the case leading to the filing of the present Criminal Revision are as follows:

- i. The 1st respondent, IDBI Bank Limited, Chennai, represented by its Deputy General Manager Sanjay Kumar, filed a petition in Crl.M.P.No.1446 of 2017 before the Chief Metropolitan Magistrate, Allikulam, Chennai 3, under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (herein after referred to as 'SARFAESI Act'), against the respondents 2 to 11 to enable the bank to take possession of the secured assets morefully described in the schedule of the petition. The learned Chief Metropolitan Magistrate, Allikulam, vide her orders dated 04.09.2017, allowed the said petition and appointed an Advocate



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Commissioner to take physical possession of the property.

- ii. Subsequently, the present petitioner filed a petition in Crl.M.P.No.3005 of 2018 to recall the warrant issued on 13.11.2017 to the Advocate Commissioner in Crl.M.P. No.1446 of 2017. The petitioner was actually a third party to the proceedings in Crl.M.P. No.1446 of 2017.
- iii. Crl.M.P. No.3005 of 2018 was dismissed on 07.09.2018 for non prosecution. Subsequently the petitioner filed a petition in Crl.M.P. No.4297 of 2018 to restore the petition in Crl.M.P.No.3005/2018.
- iv. Learned Chief Metropolitan Magistrate, Egmore, Chennai, vide his orders dated 12.11.2019, dismissed the said petition on the ground that the orders passed by the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, under Section 14 of the SARFAESI Act, is an administrative order and the same cannot be questioned before any authority except DRT, High court or Supreme Court. Aggrieved over the said orders, the present Criminal Revision is filed.



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3. Heard Mr. A.G. Prabhu Kumar, learned counsel for the petitioner, Ms. Pavithra Dayalan, learned counsel appearing for the 1st respondent and Mr. M. Kempraj, learned counsel for the 7th respondent.

4. Crl.M.P. No.3005/2018 was filed to recall the warrant issued on 13.11.2017 to the Advocate Commissioner to take possession of the land under SARFAESI Act in Crl.M.P. No.1447/2017. The main contention of the present petitioner was that she, her mother, sister and three brothers are legal heirs of S. Thanapalan (6th respondent in Crl.M.P.No.1446/2017), who died on 30.05.2013. According to the petitioner, she did not borrow any loan from the 1st respondent bank, namely, IDBI Bank, and that they were not served with any notice under Section 14 of the SARFAESI Act. According to her, she is entitled to 1/6th share in the the property mentioned in the petition in Crl.M.P.No.1446 of 2017.

5. It is pertinent to point out that the orders passed under Section



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14 of the SARFAESI Act by District Magistrate/Chief Metropolitan Magistrate is only to assist the creditors in taking over possession upon refusal by the borrower to hand over it. Therefore, the nature of the powers vested in District Magistrate/Chief Metropolitan Magistrate under Section 14 of the SARFAESI Act, as held by the Apex Court in ***NKGSB Co-operative bank Ltd. vs. Subir Chakravarthy*** reported in ***2022 LiveLaw (SC) 212***, are ministerial and not adjudicatory. While disposing of the application under Section 14 of the SARFAESI Act, no element of quasi judicial function or application of mind would be required. The Magistrate has to adjudicate and determine the correctness of the information given in the application and nothing more. Moreover, section 14 of the Act does not involve an adjudication qua issues raised by the borrower against the secured creditor in taking possession of the secured assets. The petitioner herein wants to adjudicate her right over the property by the Chief Metropolitan Magistrate which the Chief Metropolitan Magistrate cannot do while dealing with a petition under Section 14 of the SARFAESI Act. It is also relevant to extract the provisions of Section 14(3) of the SARFAESI Act.



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"No act of the Chief Metropolitan Magistrate or the District Magistrate [any officer authorised by the Chief Metropolitan Magistrate or District Magistrate] done in pursuance of this section shall be called in question in any court or before any authority."

6. The learned Chief Metropolitan Magistrate, by a well considered order, had dismissed the petition in Crl.M.P.4297/2018. I do not see any reason to interfere with the same. Accordingly, the Criminal Revision Case stands dismissed. Consequently connected miscellaneous petition is closed.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.
bga

To

The Chief Metropolitan Magistrate,
Egmore, Chennai 600 008.

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