



WP.No.17937/2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

WP.No.17937/2024 & WMP.Nos.19671 & 19672/2024

P.Vidhyaprakash

... Petitioner

Vs.

1.Small Industries Development Bank of
India, Oversees Towers, No.756L, Anna Salai
Opposite to TVS, Chennai 600 002
represented herein by its
Authorised Officer.

2.District Magistrate & District Collectorate
Namakkal, O/o.The District Collector,
Namakkal.

3.Rengasamy

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of certiorari calling for the records on the file of thw 2nd respondent bearing Crl.MP.9554/2023 dated 08.11.2023 and quash the same



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For Petitioner : Mr.P.J.Sriganesh
For Respondents : Mr.Dhruva for
M/s.Anand Samy & Dhruva for R1

ORDER

[Order of the Court was made by S.S.SUNDAR, J.,]

- (1)The present writ petition has been filed by the petitioner seeking to quash the order dated 08.11.2023 passed by the 2nd respondent in CrI.MP.No.9554/2023.
- (2)The case of the petitioner is that he is carrying on business in the name and style of T.S.S.Knitwear, and engaged in the manufacturing of knitted garments including T-Shirts. While projecting himself as a person having annual turnover of Rs.20 Crores, the petitioner states that he entered into a Lease Deed with the 3rd respondent on 14.09.2021 and took the property on lease to carry on his business. It is admitted by him that the premises had earlier been mortgaged with the 1st respondent / Bank by the original owner and proceedings had been initiated under Section 13[4] of the SARFAESI Act as against the borrower. The 1st respondent/Bank has



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obtained an order from the learned Chief Judicial Magistrate, Tiruppur, on 06.02.2024, for taking physical possession of the property in the application filed under Section 14 of SARFAESI Act. An Advocate Commissioner was also appointed. Since the Advocate Commissioner reported that the premises was under Lock and Key, it is stated by the learned counsel for the 1st respondent that a further direction was issued by the learned Magistrate on 08.02.2024 to break open the secured asset and hand over the same to the 1st respondent/Bank. The GST registration of the petitioner shows that his principal place of business is Door No.280/3A, Ganapathipalayam Road, Veerapandi Post, Tiruppur. The petitioner also states that he is in possession of the property which was leased out to him, namely, building with three floors, in SF.No.4/684, Nochipalayam Road.

(3) To establish the fact that the petitioner is not carrying on any business in the disputed premises which is mortgaged with the 1st respondent/Bank, the learned counsel for the 1st respondent/Bank submitted that the Advocate Commissioner who was appointed to take physical possession, reported that the premises was under lock and key. The GST registration



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of the petitioner also indicate that the petitioner is not doing any business in the premises in respect of which the 1st respondent/Bank has obtained an order from the learned Chief Judicial Magistrate, Tiruppur, in an application filed under Section 14 of the SARFAESI Act.

(4)The grievance of the petitioner is that he was not given an opportunity even though he is in the possession of the property.

(5)The Hon'ble Supreme Court and this Court have repeatedly held that when an application is filed under Section 14 of SARFAESI Act, no notice is required to be sent to the borrower. In the instant case, the petitioner has produced before this Court, the Lease Agreement which is an unregistered one and hence, is admissible in evidence. Therefore, the bona fides of the claim of petitioner is doubtful. The petitioner might be set up by the borrower to prolong the litigation at least to prevent the 1st respondent/Bank from taking physical possession of the premises. Though a person who got lease prior to the mortgage has a right to protect the possession under General Law, the person who is inducted as a tenant after the mortgage, has no independent right and the rights of the 1st respondent/Bank cannot be put in jeopardy by a third party like the



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petitioner herein who produced only an unregistered inadmissible document to show that he is a tenant. Assuming that the petitioner is a tenant, his claim at best can be raised only in an application filed under Section 17[4A] of SARFAESI Act. This position is settled.

(6)The learned counsel for the petitioner submitted that the petitioner is carrying on business by engaging more than 60 persons. However, the photographs would show only a few heads. It appears that an attempt is made by the petitioner to create an impression as if he is carrying on some business by engaging a few in the business premises of the borrower. Therefore, this Court is unable to accept the case of the petitioner that he is a stakeholder and caught in the middle on account of the Bank taking coercive action against the borrower.

(7)The petitioner, has earlier submitted a representation to the 1st respondent Bank seeking time till 15.06.2024 for vacating the premises. Having pleaded time till 15.06.2024, the petitioner has not given any reason why he could not vacate the premises even assuming that he is a tenant under the borrower. All the facts put together shows that the claim of the petitioner is not *bona fide*. The circumstance would only show that the



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petitioner has come to this Court for extraneous reasons.

(8)Therefore, this writ petition is devoid of any merits and hence,
dismissed. No costs. Consequently, connected miscellaneous petitions
are closed.

[S.S.S.R., J.] [N.S., J.]
23.07.2024

AP

Internet : Yes

To

1.The Authorised Officer
Small Industries Development Bank of
India, Oversees Towers, No.756L, Anna Salai
Opposite to TVS, Chennai 600 002.

2.District Magistrate & District Collector
Namakkal, O/o.The District Collector,
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S.S. SUNDAR, J.,
and
N.SENTHILKUMAR, J.,

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