Case Citation: (2026) ibclaw.in 4621 HC

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2026

CORAM :

THE HONOURABLE MR. SUSHRUT ARVIND DHARMADHIKARI,
CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.31786 of 2026
and W.M.P.Nos.34947, 34948 and 34951 of 2026

Muthuraman
S/o.Karuppiah
Door No.41, Swathi Flats,
No.119/47, Patel Road,
Perambur, Chennai-600011.

Petitioner(s)

Vs

1. The Bank of India
   Rep by its Authorized Officer,
   Star House, 4th Floor, No.30,
   Old No.17, Erabalu Street,
   Chennai-600 001.

2. G.Krishnaveni,
   W/o.Gopal,
   No.5056, 21st Main Road,
   Anna Nagar, Chennai-600 040.

3. P.Vinoth Kumar
   Advocate Commissioner
   Madras High Court Advocate Association
   High Court Campus, Chennai-600 104.

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4. The Station House Officer
K-1, Sembiyam Police Station
Perambur, Chennai.

Respondent(s)

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the records pertaining to the impugned order in Crl.M.P.No.2249/2026 passed by the learned Chief Metropolitan Magistrate, Egmore on 28.07.2026 and it’s consequently the 3rd respondent affixed the notice dated 04.08.2026 on the premises at Door No.41, Swathi Flats, No.119/47, Patel Road, Perambur, Chennai-600011.

For Petitioner(s): Mr. P.Vijendran

For Respondent(s): Mr.A.Amarnath
Govt. Advocate (Crl Side)
for R4

ORDER
(Order of the Court was made by the Hon'ble Chief Justice)

The petitioner has filed this writ petition under Article 226 of the Constitution of India seeking to quash the order dated 28.07.2026 passed by the learned Chief Metropolitan Magistrate, Egmore, in Crl.M.P.No.2249 of 2026 under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [SARFAESI Act], along

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with the consequential possession notice dated 04.08.2026 issued by the third respondent/Advocate Commissioner.

2.1. Succinctly put, the facts leading to this writ petition are that the petitioner entered into an unregistered lease agreement for 11 months on 30.11.2017 with the second respondent/landlord for the ground floor property at Door No.41, Swathi Flats, Perambur, Chennai, after paying an advance lease amount of Rs.11,00,000/-. The lease was periodically extended for 11-month terms up to 09.10.2020 without registration. In addition to the lease amount, the petitioner claims to have advanced loans totaling Rs.26,50,000/- to the second respondent on various dates.

2.2. It is further stated that when the second respondent demanded the petitioner to vacate from the property without returning the funds, the petitioner filed a civil suit in O.S.No.2469 of 2020 before the VI Additional City Civil Court, Chennai. The trial court granted a decree on 27.11.2023 for recovery of money (Rs.37,00,000/- in total) and a permanent injunction restraining the second respondent from interfering with his possession until the

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debt is cleared. Execution proceedings in E.P.No.90 of 2026 are currently pending. Furthermore, the petitioner filed O.S.No.2045 of 2024 against respondent Nos.1 and 2, alleging that the mortgage created on the property is fraudulent.

2.3. It is averred that the first respondent initiated recovery proceedings under the SARFAESI Act against the second respondent (guarantor) and Ragavi Enterprises (borrower). The petitioner challenged the possession notice by filing S.A.No.218 of 2026 before the Debts Recovery Tribunal-III, Chennai, which was dismissed on 05.05.2026. An appeal in R.A. (SR) No.1323 of 2026 is currently pending before the Debt Recovery Appellate Tribunal (DRAT), Chennai.

2.4. It is also asserted that the first respondent/Bank subsequently obtained an order dated 28.07.2026 under Section 14 of the SARFAESI Act from the Chief Metropolitan Magistrate, Egmore, appointing the third respondent as Advocate Commissioner to take physical possession. The Advocate Commissioner issued a

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notice dated 04.08.2026 directing the occupants to vacate within seven days.

3. Learned counsel for the petitioner strongly relied on a decision of the Supreme Court in *Harshad Govardhan Sondagar v. International Asset Reconstruction Co. Ltd*[1] and contended that as a tenant in lawful possession under a lease created prior to or during the mortgage, he cannot be forcibly dispossessed under Section 14 of the SARFAESI Act without due process of law.

4. We have heard learned counsel for the petitioner at length and considered the documents on record.

5. At the outset, it is to be noted that the decision of the Supreme Court in *Harshad Govardhan Sondagar* (supra), on which heavy reliance is placed by learned counsel for the petitioner, is wholly misplaced and distinguishable on facts and law. In the said decision, the Supreme Court protected the possession of *bona fide* lessees whose tenancy was created through valid, legally

1 *(2014) 6 SCC 1*

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enforceable lease deeds. However, the Supreme Court specifically clarified in Paragraph 36 that where a lessee relies on an unregistered lease instrument or oral agreement, Section 107 of the Transfer of Property Act, 1882 applies. Under Section 107, a lease exceeding one year can only be created by a registered instrument. In the absence of registration, an unregistered lease agreement does not create any leasehold right beyond a period of one year. The relevant portion of the said judgment is reproduced hereunder:

> *"36. We may now consider the contention of the respondents that some of the appellants have not produced any document to prove that they are bona fide lessees of the secured assets. We find that in the cases before us, the appellants have relied on the written instruments or rent receipts issued by the landlord to the tenant. Section 107 of the Transfer of Property Act provides that a lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made "only by a registered instrument" and all other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. Hence****, if any of the appellants claim that they are entitled to possession of a secured asset for any term***

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> ***exceeding one year from the date of the lease made in his favour, he has to produce proof of execution of a registered instrument in his favour by the lessor. Where he does not produce proof of execution of a registered instrument in his favour and instead relies on an unregistered instrument or oral agreement accompanied by delivery of possession, the Chief Metropolitan Magistrate or the District Magistrate, as the case may be, will have to come to the conclusion that he is not entitled to the possession of the secured asset for more than a year from the date of the instrument or from the date of delivery of possession in his favour by the landlord***.”
>
> *[emphasis supplied]*

6. In the instant case, the petitioner relies on an unregistered 11-month lease deed executed on 30.11.2017 and subsequent unregistered extensions. The mortgage was registered in favour of the first respondent/Bank on 26.07.2018. Admittedly, the petitioner holds no registered lease deed and, therefore, he cannot claim the status of a protected lessee as enunciated by the Supreme Court in *Harshad Govardhan Sondagar* (supra).

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7. The permanent injunction obtained by the petitioner in O.S.No.2469 of 2020 is a decree passed in a civil suit between private parties (the tenant and the landlord). Section 34 of the SARFAESI Act explicitly bars the jurisdiction of civil courts in respect of any action taken or to be taken by a secured creditor under the SARFAESI Act. A money decree or an injunction decree against the borrower/landlord cannot override the statutory right of the Bank to enforce its security interest against the mortgaged property.

8. The petitioner has already invoked the statutory mechanism under Section 17 of the SARFAESI Act by filing S.A.No.218 of 2026 before the DRT-III, Chennai. Pursuant to its dismissal, an appeal in R.A.(SR) No. 1323 of 2026 has been filed and the same is pending before the DRAT, Chennai. In our considered opinion, the remedy for the petitioner, therefore, lies exclusively before the DRAT in his pending appeal or through appropriate execution of his civil decree against the landlord personally.

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9. The Supreme Court in *Phoenix ARC (P) Ltd v. Vishwa Bharati Vidya Mandir*[2], emphatically held that the remedy against an order passed under Section 13(4) or Section 14 of the SARFAESI Act is under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal and a writ petition is not maintainable. The observations of the Supreme Court are extracted herein below:

> *"10. In United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110,* ***it was observed and held by this Court that the remedies available to an aggrieved person against the action taken under Section 13(4) or Section 14 of the SARFAESI Act, by way of appeal under Section 17, can be said to be both expeditious and effective. On maintainability of or entertainability of a writ petition under Article 226 of the Constitution of India, in a case where the effective remedy is available to the aggrieved person****, it is observed and held in the said decision in paras 43 to 46 as under : (SCC pp. 123-24)*
>
> > *'43. Unfortunately, the High Court [Satyawati Tondon v. State of U.P., 2009 SCC OnLine All 2608] overlooked the settled law that the* ***High Court will ordinarily not entertain a petition under Article 226 of the***

2 (2022) 5 SCC 345

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Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

...

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and

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*not one of compulsion, but **it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.***

*46. It must be remembered that stay of an action initiated by the State and/or its agencies/instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations towards the citizens. **In cases relating to recovery of the dues of banks, financial institutions and secured creditors, stay granted by the High Court would have serious adverse impact on the financial health of such bodies/institutions, which (sic will) ultimately prove detrimental to the economy of the nation. Therefore, the High Court should be extremely careful***

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> ***and circumspect in exercising its discretion to grant stay in such matters. ...'***

...

12. In Kanaiyalal Lalchand Sachdev v. State of Maharashtra, (2011) 2 SCC 782, after referring to the earlier decisions of this Court in Sadhana Lodh v. National Insurance Co. Ltd., (2003) 3 SCC 524, Surya Dev Rai v. Ram Chander Rai, (2003) 6 SCC 675 and SBI v. Allied Chemical Laboratories, (2006) 9 SCC 252 ***while upholding the order passed by the High Court dismissing the writ petition on the ground that an efficacious remedy is available under Section 17 of the SARFAESI Act, it was observed that ordinarily relief under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person****."*

[emphasis supplied]

10. In view of the judicial dictum of the Supreme Court in the decision referred supra, this Court is not inclined to entertain this writ petition under Article 226 of the Constitution of India.

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The writ petition is, accordingly, dismissed, sans costs. Consequently, connected interim applications stand closed.

(SUSHRUT ARVIND DHARMADHIKARI,CJ) (G.ARUL MURUGAN,J)

10.08.2026

Index : Yes/No
Neutral Citation : Yes/No
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To:

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THE HON'BLE CHIEF JUSTICE
AND
G.ARUL MURUGAN,J.

(sasi)

W.P.No.31786 of 2026

10.08.2026

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