Most Urgent/Out at once

OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE (HQ): DELHI

No. 21658-676-J Genl./HCS/2021 Dated, Delhi the 30 OCT 2021

Sub: Circulation of copy of order dated 22/10/2021 passed by the Hon'ble Mr. Justice Amit Bansal in CM (M) No. 716/2021 titled as "Cholamandalam Investment and Finance company Ltd. Vs. Rajeev Chawla & Anr." for immediate compliance/necessary action.

1. All the Ld. Principal District & Sessions Judges, Delhi, New Delhi (except Central District) with the request to circulate the same to all the Ld. CMM's under their kind control for compliance in proceedings under section 14 of the SARFAESI Act, 2002.
2. Ld. CMM, Central District, Tis Hazari Courts, Delhi for compliance in proceedings under section 14 of the SARFAESI Act, 2002.
3. The Ld. Registrar General, Hon'ble High Court of Delhi, New Delhi for information.
4. PS to Ld. Principal District & Sessions Judge (HQs), Tis Hazari Courts, Delhi (for information).
5. The Chairman, Website Committee, Tis Hazari Courts, Delhi with the request to direct the concerned official to upload the same on the Website of Delhi District Courts.
6. The Director (Academics), Delhi Judicial Academy, Dwarka, New Delhi for information as requested vide letter no.DJA/Dir.(Acd)/2019/4306 dated 06.08.2019.
7. Dealing Assistant, R&I Branch for uploading the same on LAYERS.
8. For uploading the same on Centralized Website through LAYERS.

30/10/21

(RAKESH PANDIT)
Officer-in Charge, Genl. Branch, (C)
Addl. District & Sessions Judge,
Tis Hazari Courts, Delhi

Encl.: As above.

MOST URGENT

FINAL DRAFT

FIXED FOR 01/11/2021 BEFORE
THE COURT LD. CMM TIS HAZARI

IN THE DELHI HIGH COURT OF NEW DELHI

No. 16759/C-1Dt.: 29/10/21

From,

The Registrar General,
High Court of Delhi,
New Delhi.

To,

1. The Principal District & Sessions Judge , (Headquarter), Tis Hazari Court, Delhi
2. The Principal District & Sessions Judge, East, Karkardooma Courts, Delhi.
3. The Principal District & Sessions Judge, South-West, Dwarka Court, New Delhi.
4. The Principal District & Sessions Judge, Shahdara, Karkardooma Courts, Delhi.
5. The Principal District & Sessions Judge, South-East, Saket Court, New Delhi.
6. The Principal District & Sessions Judge, District-West, Tis Hazari Court, Delhi.
7. The Principal District & Sessions Judge, District-New Delhi, Patiala House Court, New Delhi.
8. The Principal District & Sessions Judge, District, North-West, Rohini Courts, Delhi.
9. The Principal District & Sessions Judge, District-North, Rohini Courts, Delhi.
10. The Principal District & Sessions Judge-cum-Special Judge, Rouse Avenue, New Delhi.
11. The Principal District & Sessions Judge, North-East, Karkardooma Courts, Delhi.
12. The Principal District & Sessions Judge, South, Courts, New Delhi.
13. Ms. Chhavi Kapoor,Cheif Metropolitan Magistrate-West, Tis Hazari Court,Delhi.



CM (M) No. 716/2021

Cholamandalam Investment and Finance Company Limited. ... Petitioner/s

Versus

Rajeev Chawla & Anr. ... Respondent/s

Petition under Article 227 of the Constitution of India against the order Dt. 25/09/2021 passed by Ms. Chhavi Kapoor, Chief Metropolitan Magistrate-West, THC, Delhi in ID No. 758/2021

CM(M) NO. 721/2021

Cholamandalam Investment and Finance Company Limited. ... Petitioner/s

Versus

Roshanara Abdur Rub & Anr. ... Respondent/s

Petition under Article 227 of the Constitution of India against the order Dt. 25/09/2021 passed by Ms. Chhavi Kapoor, Chief Metropolitan Magistrate-West, THC, Delhi in ID No. 759/2021

Sir,

I am directed to forward herewith for information and immediate compliance of a copy of order dated 22/10/20121 passed by the Hon'ble Mr. Justice Amit Bansal of this Court in the above noted case.

Please acknowledge receipt.

Yours faithfully

Administrative Officer (J) C-1
For Registrar General

DIC (General)
CMM (Central)

PP DSJ (HQS)
29.X.2021

Encl: Copy of Order dt.22/10/2021
Memo of Parties.

(2)

4

IN THE HIGH COURT OF DELHI AT NEW DELHI

CM(M)-716/2021 C.M.(MAIN) NO. OF 2021

CHOLAMANDALAM INVESTMENT AND
FINANCE COMPANY LIMITED .....PETITIONER

VERSUS

RAJEEV CHAWLA & ANR. .....RESPONDENTS

MEMO OF PARTIES

CHOLAMANDALAM INVESTMENT AND FINANCE COMPANY LIMITED
Registered Office at:
1st Floor, 'Dare House', No. 2,
N.S.C. Bose Road, Chennai-600001

Branch Office at:
6, Pusa Road,
Karol Bagh,
New Delhi

Through its Authorised Officer:
MR. SUDHIR TOMAR ...PETITIONER
Email: sudhirt@chola.murugappa.com
(M)9818460101 Versus

1. RAJEEV CHAWLA
H. No. E-53, 2nd Floor,
Kirti Nagar,
New Delhi-110015 ....RESPONDENT NO. 1
Email:rajeevchawla@gmail.com, (M)9811177472

2. ANJANA CHAWLA
H. No. E-53, 2nd Floor,
Kirti Nagar, Email:rajeevchawla@gmail.com, (M)9811177472
New Delhi-110015 ...RESPONDENT NO.2

11.10.2021

CHOLAMANDALAM INVESTMENT &
FINANCE COMPANY LIMITED
Through

SUSHANT BALI
Advocate for the Petitioner
Chamber No. 378, Lawyers' Chambers, Block-II,
Delhi High Court, New Delhi-110003
(M):-+91-8447242406
e-mail ID: sushantbali.advocate@gmail.com

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4

IN THE HIGH COURT OF DELHI AT NEW DELHI

C.M.(MAIN) NO. OF 2021

CHOLAMANDALAM INVESTMENT AND FINANCE COMPANY LIMITED .....PETITIONER

CM(M)-721/2021

VERSUS

ROSHANARA ABDUR RUB & ANR. .....RESPONDENTS

MEMO OF PARTIES

CHOLAMANDALAM INVESTMENT AND FINANCE COMPANY LIMITED
Registered Office at:
1st Floor, 'Dare House', No. 2,
N.S.C. Bose Road, Chennai-600001

Branch Office at:
6, Pusa Road,
Karol Bagh,
New Delhi
Through its Authorised Officer:
MR. SUDHIR TOMAR
Email: sudhirt@chola.murugappa.com
(M)9818460101 ...PETITIONER

Versus

1. ROSHANARA ABDUR RUB
FA-328/5, Plot No. 91,
Third Floor,
Mansarover Garden,
New Delhi-110015
Email: startimber51@gmail.com ....RESPONDENT NO.1
(M):9911713051
2. ABDUR RUB
B-78, Timber Market,
Kirti Nagar,
New Delhi-110015 ...RESPONDENT NO.2
Email: startimber51@gmail.com

11.10.2021

CHOLAMANDALAM INVESTMENT & FINANCE COMPANY LIMITED

Through

Sushant Bali

SUSHANT BALI
Advocate for the Petitioner
Chamber No. 378, Lawyers' Chambers, Block-II,
Delhi High Court, New Delhi-110003
(M):-+91-8447242406
e-mail ID: sushantbali.advocate@gmail.com

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CM(M) 716/2021

CHOLAMANDALAM INVESTMENT AND FINANCE COMPANY LIMITED ..... Petitioner

Through: Mr. Sanjeev Bhandari along with Mr. Sushant Bali, Advocates.

versus

RAJEEV CHAWLA & ANR. ..... Respondents

Through: None.

\+ CM(M) 721/2021

CHOLAMANDALAM INVESTMENT AND FINANCE COMPANY LIMITED ..... Petitioner

Through: Mr. Sanjeev Bhandari along with Mr. Sushant Bali, Advocates.

versus

ROSHANARA ABDUR RUB & ANR. ..... Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

% 22.10.2021

[VIA VIDEO CONFERENCING]

CM No. 36706/2021 (for exemption) in CM(M) 716/2021
CM No. 36858/2021 (for exemption) in CM(M) 721/2021

1. Allowed, subject to all just exceptions.

2. The applications are disposed of.

CM(M) 716/2021 & CM(M) 721/2021

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The present petitions under Article 227 of the Constitution of India

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have been filed, pressing for the following reliefs:

(i) Setting aside of Order dated 25.09.2021 passed by Chief Metropolitan Magistrate (CMM) (West District), Tis Hazari Courts, Delhi in Case No. ID No. 758 of 2021 and Case No. ID No. 759 of 2021;

(ii) Direction to the CMM to pass an order appointing the Receiver to take the physical possession of the secured assets;

(iii) Passing of appropriate directions to the CMM to upload the orders passed in the matters pertaining to Section- 14 of the SARFAESI Act, 2002 (Act) in terms of decisions in the matter of ***Sanser Pal Singh Vs. Union of India & Ors.*** bearing W.P.(C) No.1983 of 2021; and

(iv) Passing of appropriate directions to the Courts of CMM to various districts of New Delhi to follow uniform procedure while adjudicating Applications under Section-14 of the Act, in terms of Section 14 of the Act.

4. Brief facts leading to the filing of the present petition are as follows:

(i) The respondents, who are borrowers within the meaning of Section 2(f) of the Act, availed financial assistance from the petitioner and created security interest under Section 2(zb) of the Act by way of equitable mortgage in relation to immovable properties.

(ii) Consequent to defaults in repayment of dues by the respondents, the accounts of the respondents were declared Non-Performing Assets (NPA) within the meaning of Section 2(o) of the Act.

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(iii) Thereafter, on 5th October, 2020, the petitioner issued Demand

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Notices under Section 13(2) of the Act whereby the petitioner demanded the total outstanding amounts in the loan account as well as the details of the secured assets. The said Demand Notices were sent to the respondents on 10th October, 2020.

(iv) Upon receiving no objection or representation in reply to the aforesaid Demand Notices, the petitioner filed applications under Section 14 of the Act on 15th June, 2021 in order to enforce the security interest and take physical possession of the properties in question.

5. Vide impugned orders dated 25th September, 2021 passed in the applications filed under Section 14 of the Act, the CMM, while directing the petitioner to file an affidavit regarding the current status of the possession of the properties in question, observed/held that (i) the petitioner was required to disclose on affidavit whether the properties in question were in possession of a tenant or a third party other than the respondents/borrowers in light of the judgment of the Supreme Court in ***Harshad Govardhan Sondagar vs International Assets Reconstruction Co. Ltd. & Ors*** (2014) 6 SCC 1; (ii) even after the amendment to the Act, the petitioners approaching the Court under Section 14 of the Act are not absolved from disclosing the status of possession of the secured assets; (iii) the purpose of the amendment to the Act is to safeguard the rights of lawful tenants; (iv) principles of natural justice dictate that a party must not be condemned unheard and hence, the petitioner should have issued notices under Section 13(4) of the Act in order to take symbolic possession of the properties in question; (v) the affidavit dated 7th September, 2021 filed by the petitioner only talks about a valuation report and does not state whether the properties in question were in

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possession of the respondents at the time of creation of the mortgage or the current status of the properties in question after issuance of Demand Notices by the petitioner; and (vi) the petitioner has not inspected the properties in question to find out as to who is in possession of the properties in question at the time of institution of the applications under Section 14 of the Act.

6. The counsel appearing on behalf of the petitioner has impugned the orders passed by the CMM on the following grounds:-

(i) the CMM had no jurisdiction to decide on the question of tenancy or possession of any lessee or third party in respect of the properties in question as the jurisdiction to decide these issues vested in the DRT;

(ii) the impugned orders have wrongly placed reliance on the judgment of the Supreme Court in ***Harshad Govardhan Sondagar*** supra as the said judgment was in the context of protection to be afforded to a *bonafide* tenant in occupation of the property in question;

(iii) the said judgment in ***Harshad Govardhan Sondagar*** supra was delivered in 2013, subsequent to which the Act has been amended on 1st September, 2016 and Section 17(4A) has been added whereby protection has been afforded to a *bonafide* tenant and right has been given to him to approach the DRT;

(iv) there cannot be any requirement of the secured creditor to inspect the properties in question after issuance of the notice under Section 13(2) of the Act;

(v) there was no mandatory requirement to the secured creditor to take symbolic possession under Section 13(4) of the Act before filing any application under Section 14 of the Act;

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(vi) principles of natural justice have not been violated in the present case as it was for the receiver to be appointed in terms of the order passed by the CMM under Section 14 of the Act to issue a fifteen days' notice to the respondents/borrowers and affix the said notice at a conspicuous part of the properties in question; and

(vii) in terms of the proviso of Section 14 of the Act, the only requirement of the secured creditor is to file an application accompanied by an affidavit affirming (i) to (ix) as provided in the said proviso.

7. Advance copy of the present petition has been served by email to the respondents/borrowers, however none appears on behalf of the respondents/borrowers. Need is not felt to issue notice to the respondents/borrowers in the present case as the impugned orders were also passed in the absence of the respondents/borrowers and there is no legal requirement for the borrower to be heard before the CMM passes an order under Section 14 of the Act as the order passed by the CMM under Section 14 is only a procedural order and no substantive rights of the parties are affected. All rights of the borrower or any aggrieved person are protected under Section 17 of the Act.

8. Having heard the counsel for the petitioner, this Court is of the view that the impugned orders passed by the CMM are clearly beyond jurisdiction. There was no basis for the CMM to direct the petitioner to file an affidavit regarding the current status of the occupation of the properties in question.

9. The CMM has wrongly relied upon the judgment of the Supreme Court in ***Harshad Govardhan Sondagar*** supra which was a judgment passed to protect the interest of the *bonafide* tenant in occupation of the

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property in question and cannot come to the aid of a borrower in default. It is noted in the said judgment that the secured creditor has to state in his affidavit accompanying the application under Section 14 of the Act that secured asset is not in possession of a lessee under a **valid lease made prior to the creation of the mortgage by the borrower or made in accordance with Section 65A of the Transfer of Property Act prior to receipt of notice under Section 13(2) of the Act.** Therefore, in terms of the aforesaid judgment, the person who comes into occupation and possession of the secured asset after creation of mortgage by the borrower or after issuance of notice under Section 13(2) of the Act is not to be provided any legal protection.

10. Further, after passing of the aforesaid judgment in ***Harshad Govardhan Sondagar*** supra, the Act has been amended and the words 'other aggrieved person' have been inserted in Section 17(3). Therefore, the possession of the secured asset can be restored to any aggrieved person, and not just the borrower. Furthermore, insertion of Section 17(4A) has provided the DRT with powers to decide the claims of tenancy or leasehold rights over a secured asset. As a consequence of the amendments, protection has been afforded to aggrieved persons, which includes *bonafide* tenants.

11. In view of the above, the CMM had no jurisdiction to go into these questions while deciding the applications under Section 14 of the Act, as the said jurisdiction is that of the DRT. Therefore, the direction given to the petitioner to provide the details on affidavit in respect of the current status of the occupation of the properties in question is wholly without jurisdiction. It has also been erroneously held in the impugned orders that principles of natural justice could be violated if a person in lawful possession of the

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secured asset is deprived of possession of the said asset. As noted above, orders passed under Section 14 are only a procedural requirement and no substantive rights of the parties are affected. Once a receiver is appointed by the CMM under Section 14 of the Act, a notice is required to be issued and affixed at the secured asset by the receiver pursuant to orders passed under Section 14 of the Act.

12. Accordingly, the impugned orders passed by the CMM are completely without jurisdiction and the same are set aside. The CMM is directed to forthwith decide the applications filed under Section 14 of the Act on behalf of the petitioner without insisting on the affidavit with regard to the current status of possession of the properties. The matters be taken up by the CMM on 1st November, 2021 at 2.00PM on which date the petitioner would appear and appropriate orders on the applications under Section 14 would be passed by the CMM.

13. The counsel appearing on behalf of the petitioner has also pointed out the difficulty faced by the secured creditors on account of the orders being passed by the CMM under Section 14 of the Act not being uploaded in a timely manner. This results in delay in secured creditors taking steps in terms of the said orders or taking legal remedies in respect of the said orders. There is merit in the contention of the counsel for the petitioner. Time is of essence in proceedings initiated under the Act. The purpose behind the Act would be frustrated if there are delays in implementing orders passed under the Act. Accordingly, it would be expedient and in the interest of justice that all CMMs in Delhi ensure that the orders passed by them under Section 14 of the Act are promptly uploaded after the said orders are passed.

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14. A copy of this order be also forwarded to the Principal District and

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Sessions Judges in Delhi for circulation to all CMMs for compliance in proceedings under Section 14 of the SARFAESI Act, 2002.

15. With the aforesaid directions, the petitions stand disposed of.

AMIT BANSAL, J.

OCTOBER 22, 2021
Sakshi R.

TRUE COPY
EXAMINER

THE SEAL OF DELHI HIGH COURT NEW DELHI

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