

Office of the Principal District & Sessions Judge, Delhi
 Outside Receipt Seal
 Date/Time: 01 NOV 2021
 No. 5272

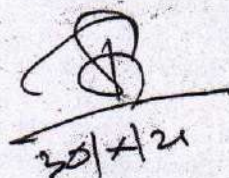
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 01/11/2021
 OFFICE OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE (HQ): DELHI
 No. 21658-676-1 Genl./HCS/2021

Most Urgent/Out at once

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. (North)
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.(Ac)/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.


 30/11/21

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

Encl.: As above.

OFFICE OF THE PR. DISTRICT & SESSIONS JUDGE, ROHINI COURTS

Genl.I/N-W/Rohini/2021/...384 (own)...

Delhi, dated the 08/11/2021

Copy forwarded for information and necessary action to :-

1. Ld. Chief Metropolitan Magistrate, North-West and North District, Rohini Courts, Delhi.
2. The Dealing Official, R & I Branch, Rohini Courts, Delhi for uploading the same on LAYERS.
- ✓ 3. The Dealing Official, Computer Branch, Rohini Courts, Delhi for uploading the same on WEBSITE.

(RAKESH KUMAR-IV)
 Additional Sessions Judge
 Officer Incharge, General Branch,

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CM(M)-716/2021 C.M.(MAIN) NO. OF 2021
CHOLAMANDALAM INVESTMENT AND
FINANCE COMPANY LIMITEDPETITIONER
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
Email: sudhirt@chola.murugappa.com
(M)9818460101

...PETITIONER

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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* 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

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[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

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

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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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(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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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.

OCTOBER 22, 2021
Sakshi R.

sd
AMIT BANSAL, J.

TRUE COPY
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EXAMINER



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