IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2015

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The Hon'ble Mr. Justice R.S.Ramanathan

WP.No.5975 of 2015

1. L.Jainlavudin
2. J.Fathima Beevi ...Petitioners

vs.

1.The Assistant General Manager,
Department of Banking Supervision,
Reserve Bank of India,
Fort Glacis, No.16, Rajaji Salai,
Chennai - 600 001.
2. The Deputy Director,
Enforcement Directorate,
Shasthari Bhavan, Haddows Road,
Chennai.
3. The Deputy Director,
Central Bureau of Investigation,
Shasthari Bhavan, Haddows Road,
Chennai.
4. The Manager,
M/s.City Union Bank Ltd.,
Central Office, No.149, T.S.R.(Big Street)
Kumbakonam - 612 001.
5. The Manager,
M/s.City Union Bank Ltd.,
No.4, North Street,
Vedaranyam- - 614 840.
Nagai District. ...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, to direct the third respondent to investigate the fraud and cheating committed by the fourth and the fifth respondents herein, regarding the closing of the account of the Partnership Firm M/s.Furniture Empire in the fourth respondent/Bank and the opening of the personal loan accounts of the petitioners herein in the fifth respondent/Bank and consequently, to file a investigation report of the same within a reasonable amount of time.

For Petitioners : Mr.K.Shahul Hameed

O R D E R

It is submitted by the learned counsel appearing for petitioners that the petitioners are husband and wife. The second petitioner and her daughters have executed a power deed, dated 23.01.2008, in favour of the first petitioner for purchasing certain properties in India. The said deed was executed at Singapore and was also duly authorised their. The second petitioner is carrying on business in India along with M.Mohamed Iqbal and J.M.H.Imran Khan, under the name and style "M/s. Furniture Empire, a Partnership Firm. The Partnership business was also looked after by other two persons and the second petitioner reposed faith on them. The said Firm availed loan facility from the fourth respondent/Bank. Whileso, the first petitioner received notice, dated 14.12.2010, from the fourth respondent/Bank, demanding repayment of Rs.10121629.22. On enquiry, the petitioner came to know that, M.Mohamed Iqbal, one of the partners of the said Firm intimated the fourth respondent/Bank that he relieved from the Partnership as early as on 1.8.2010, and that was not informed to the first petitioner either by the said M.Mohamed Iqbal or by the fourth respondent/Bank. The other two partners of the Partnership Firm were also released from the liability by the fourth respondent/Bank.

2. The learned counsel appearing for petitioners further submitted that the Officials of the fourth and the fifth respondent/Bank manipulated accounts of the petitioners, without getting their consent. The fifth respondent/Bank also made the petitioners to execute a memorandum of deposit of title deeds, dated 1.10.2011, registered as Document No.317 of 2012, on the file of the SRO, Kodambakkam, in favour of the fifth respondent/Bank. The learned counsel submitted that the first petitioner has no right to create any mortgage on behalf of his wife/second petitioner and his daughters, as per the power, dated 23.1.2008, as mentioned above. Therefore, the execution of memorandum of deposit of title deeds, dated 1.10.2011, in favour of the fifth respondent/Bank is illegal. The first petitioner also contacted the fifth respondent Bank to furnish details of the partnership account, which has been declared as Non-Performing Asset (NPA), but, there was no response from the fifth respondent Bank. But, all of a sudden, the fifth respondent/Bank issued a possession notice, dated 08.02.2013, stating that they had taken symbolic possession of properties in respect of which, title deeds were already given by the petitioners. Hence, the first petitioner approached the fifth respondent/Bank and paid Rs.22,50,000/- to stop the auction.

3. The learned counsel for petitioners submitted that the officials of fourth and fifth respondent Bank committed fraud by

manipulating the accounts of the petitioners and the fifth respondent/Bank is not entitled to take action against the petitioners under the SARFAESI Act. Hence, the petitioners have filed this Writ Petition for issuing Writ of Mandamus, directing the third respondent/CBI to investigate into the fraud and cheating committed by the Officials of the fourth and the fifth respondent/Bank by registering a case against them.

4. It is seen from the affidavit filed in support of this Petition and also submission of the learned counsel for petitioners that the properties of the petitioners were brought to auction by the fifth respondent/Bank by invoking provisions of SARFAESI Act and the petitioners have also admitted the execution of memorandum of deposit of title deeds in favour of the fifth respondent/Bank. Hence, the contention of the learned counsel for the petitioners that the first petitioner has no right to create mortgage, as per the Power, dated 23.01.2008, cannot be sustainable.

5. According to me, having regard to the submission of the learned counsel for petitioners and the allegations made in the affidavit filed in support of this petition, the remedy available to the petitioners is to challenge the SARFAESI proceedings initiated by the fifth respondent/Bank. As no criminal offence has been made out, the Writ Petition is dismissed, as being devoid of merits. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

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To

1.The Assistant General Manager,
Department of Banking Supervision,
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2. The Deputy Director,
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