



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.10.2015

CORAM :

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

AND

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) No.18303 of 2015

and

MP (MD) No.1 to 3 of 2015

P.K.Venkatachalam

... Petitioner

Vs.

1.The Debt Recovery Tribunal
Madurai.

2.State Bank of India
rep.by its Manager
No.2, Bhuvaneswari Complex
Dr.Sankaran Road, Namakkal Town,
Namakkal Taluk and District.

3.R.Mirunaalini

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration declaring the proceedings in O.A.No.840/2015 pending on the file of 1st Respondent as null and void.

For Petitioner
For R - 2

: M/s.P.T.Asha for Mr.R.Gunasekar
: Mr.S.Sethuraman

ORDER

(Order of the Court was made by **R. SUDHAKAR, J.**)

This writ petition is filed to declare the proceedings in O.A.No.840/2015 pending on the file of first respondent as null and void.

2.According to the petitioner, he is a guarantor to the third respondent who was a minor student at the time of taking education loan from the second respondent bank. It appears that the third respondent failed to discharge the loan liability and has evaded all the steps taken by the second respondent to recover the amount. The bank on its part to recover the amount proceeded against the guarantor before the District Court, Namakkal by filing O.S.No.208 of 2014. In the meanwhile, the bank also took steps in O.A.No.840 of 2015 before the first respondent. The relevant portion of the order passed in the said proceedings is extracted hereunder:

IA No.1751/15.- This petition has been filed by the petitioner/applicant bank to issue an order of temporary injunction not to alienate or encumber the properties which are morefully described in the schedule. In view of the affidavit averments and the apprehensions expressed by the Id.counsel for the petitioner/applicant bank, this Tribunnal is of the view that the temporary injunction sought in this petition has to be



countenanced. Accordingly, Ad-interim injunction is granted against the respondents not to alienate or encumber the properties which are morefully described in the schedule till 09.10.15.

IA No.1752/15.-This petition has been filed for attachment of property. The respondent is directed to furnish security for Rs.30 lakhs on or before 09.10.15 under section 19 (13) (A) (B) of the RDDBFI Act, 1993. Notice also by then.

3.One is an order of temporary injunction not to alienate and encumber the properties and another is to furnish security to the tune of Rs.30 lakhs on or before 09.10.2015.

4.Several contentions were made as to how the proceedings is bad. The primary reason appears to be that there is default by the third respondent and she is likely to settle the amount. But the matter is pending before the Lok Adalat, District Court, Namakkal. In such situation, learned counsel appearing for the bank states that after interim order was passed by the Debts Recovery Tribunal on 21.08.2015, the bank taking note of the fact that there was some amount on the current account of the petitioner, set off the amount in excess of the liability of the third respondent.

5.The grievance of the petitioner is that having secured the amount, the respondent bank refused to release the documents given for another loan which has already been settled. In such situation, the present writ petition has been filed.

6.The issue as to whether the third respondent who has availed education loan would settle the matter in the Lok Adalat, is not relevant to the present case. The petitioner being a guarantor for the education loan is faced with two proceedings, one is before the Civil Court and another before the Debts Recovery Tribunal.

7.In principal, the petitioner can approach the Civil Court to dispose of the suit saying that it is not maintainable in view of the subsequent proceedings pending before the Debts Recovery Tribunal. Nevertheless, the petitioner can also raise a plea that the bank having appropriated the amount in excess of the liability of the third respondent is bound to return the original documents and if required can furnish security in any form including bank guarantee for the amount specified in I.A.No.1752 of 2015 and the bank is bound to accept the same and release the documents, on furnishing the said bank guarantee or any other form of security.

8.The writ petition is disposed of accordingly. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar.



Mj

1.The Debt Recovery Tribunal
Madurai.

2.The Manager,
State Bank of India
No.2, Bhuvaneswari Complex
Dr.Sankaran Road, Namakkal Town,
Namakkal Taluk and District.

+one cc to M/s.R.Gunasekar, Advocate in SR.No.63205/15
+one cc to Mr.S.Sethuraman, Advocate in SR.No.63024/15

W.P. (MD) No.18303 of 2015
28.10.2015

CSL/SKS-RR/05.11.2015
3P/5C