

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.4.2016

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Writ Petition No.12554 of 2016

Mr.T.Ashok Surana

... Petitioner

Vs

1. The Recovery Officer, Debts
Recovery Tribunal-II, 4th Floor,
Spencer Towers, No.770A,
Mount Road, Chennai-2.
2. State Bank of Bikaner & Jaipur,
rep.by its Assistant General Manager,
Chennai-1.

... Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Declaration declaring that the second respondent's right to pursue any further recovery measures as per Debt Recovery Certificate No. 155 of 2011 dated 19.9.2011 is barred by Article 137 of the Limitation Act against the borrowers and the guarantors.

Petitioner : Appearing in Person

Order of the Court was made by V.RAMASUBRAMANIAN, J

The petitioner has come up with the above writ petition seeking a declaration that the right of the second respondent bank to pursue any further recovery measures pursuant to the recovery certificate issued by the first respondent in D.R.C.No.155 of 2011 dated 19.9.2011 is barred by limitation under Article 137 of the Limitation Act, 1963.

2. Heard Mr.T.Ashok Surana - petitioner appearing in person.

3. It appears that the second respondent bank filed an application in O.A.No.67 of 2010 on the file of Debts Recovery Tribunal II, Chennai under Section 19 of the Recovery of Debts

Due to Banks and Financial Institutions Act, 1993 against a company by name M/s.Tetrahedron Limited, represented by one Mr.T.Rajesh Surana as its Managing Director, who is none other than the brother of the petitioner. The other Directors including the writ petitioner herein were made parties to the said application. The said application was for the recovery of a sum of Rs.11,38,038/-.

4. It appears that the Tribunal allowed the application and passed an order dated 17.3.2010 directing the recovery of the aforesaid amount from all the defendants. The petitioner herein was impleaded as the fourth defendant. Thereafter, the Presiding Officer issued a certificate of recovery in D.R.C.No.155 of 2011 dated 19.9.2011. After the issue of the said certificate of recovery, it appears that the brother of the writ petitioner herein, who was the Managing Director of the company, had paid the amount as ordered by the Debts Recovery Tribunal concerned. Consequently, the bank did not take any further proceedings.

5. Now, contending that the period of limitation for putting into execution the certificate of recovery issued by the Debts Recovery Tribunal concerned, has expired in terms of Article 137 of the Limitation Act, 1963 and that therefore, the bank cannot, hereafter, initiate any proceedings, the petitioner has come up with the above writ petition seeking a declaration.

6. We do not know how the writ petition is maintainable. The petitioner does not attack the recovery certificate bearing D.R.C.No.155 of 2011 dated 19.9.2011 as illegal.

7. On the contrary, he contends that from the date of issue of the certificate of recovery, the period of limitation for putting up the same into execution has expired.

8. If it has expired, the petitioner would have a cause of action only if an execution petition is filed. It is seen that no execution petition has so far been filed. The petitioner cannot ask this Court to undertake an academic exercise and issue a declaration.

9. It appears that the petitioner wants to seek a declaration that after the expiry of the period of limitation, the certificate of recovery cannot be put into execution, so that he could initiate next action against the bank for recovery of money that his brother has paid to the bank. This is nothing but atrocious. The decree debt once satisfied by some party, any other person will not be entitled to come and seek a declaration, so that the other person can get back his money paid in satisfaction of a decree repaid.

10. Accordingly, the writ petition is dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

RS

To

1.The Recovery Officer,
Debts Recovery Tribunal-II,
4th Floor, Spencer Towers,
No.770A, Mount Road, Chennai-2.

2.The Assistant General Manager,
State Bank of Bikaner & Jaipur,
Chennai-1.

+2cc's to Mr.T.Ashok Surana, Advocate, S.R.No.22433

W.P.No.12554 of 2016

LRS (CO)
CA(25/04/2016)



WEB COPY