

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.28861 of 2016

and

WMP No.24943 of 2016

Mr.A.Rajkafur

.. Petitioner

versus

1. The District Magistrate & Collector,  
Virudhunagar District,  
Virudhunagar.

2. The Authorised Officer of the Secured Creditor,  
& Chief Manager,  
Indian Bank,  
No.55, New Road, Sivakasi - 123.

3. Mr.N.Mariappan,

4. The Tahsildar,  
Sivakasi,

Virudhunagar District. सत्यमेव जयते

5. The Registrar,  
Debt Recovery Appellate Tribunal,  
No.55, Ethiraj Salai  
Chennai - 600 002.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the 4th respondent from executing the order dated 12.08.2016 made in Na.Ka.A1/12966/2014 and to forbear the respondents from proceeding under Section 14 of the SARFAESI Act, until disposal of the appeal in AIR No.650 of 2014 filed by the petitioner under Section 18 of the SARFAESI Act before the 5th respondent.

For Petitioner : Mr.T.Sivakumar  
For Respondents : Mr.K.V.Dhanapalan,  
Spl Govt. Pleader (for R1 & R4)  
Mr.Jayesh B.Dolia (for R2)  
Mr.D.Ferdinand (for R3)

ORDER

(Order of the Court was made by S.MANIKUMAR, J.)

Writ petition has been filed by the borrower for a mandamus forbearing the Tahsildar, Sivakasi, Virudhunagar District, from executing the order dated 12.08.2016, made in RC No.A1/12966/2014 and to forbear the respondents from proceeding under Section 14 of the SARFAESI Act, until disposal of the appeal in AIR No.650 of 2015 filed by the writ petitioner under Section 18 of the SARFAESI Act, 2002, pending on the file of the Debts Recovery Appellate Tribunal, Chennai.

2. On 09.12.2016 and 12.12.2016, there was no representation on behalf of the writ petitioner. However Mr.Jayesh B. Dolia and Mr.D.Ferdinand, learned counsel appearing for respondents 2 and 3, respectively, submitted that earlier, the writ petitioner has filed W.P.(MD) No.20892 of 2015, in the Madurai Bench of this Court, for a writ of certiorarified Mandamus, to call for the proceedings of the Tahsildar, Sivakasi, Viirudhunagar District, dated 14.11.2015 and to quash the same and forbear the respondents therein from proceeding under Section 14 of the SARFAESI Act, till the disposal of the appeal in AIR No.650 of 2015 filed by the petitioner under Section 18 of the SARFAESI ACT, before the Debts Recovery Tribunal, Chennai, and after hearing the learned counsel for the parties, WP(MD)No.20892 of 2015, filed in the Madurai Bench of this Court, has been dismissed and after the dismissal, instant writ petition has been filed challenging the subsequent order of the Tahsildar, Sivakasi, Virudhunagar District, the 4th respondent dated 12.08.2016.

3. Both the learned counsel submitted that the writ petitioner has not furnished clear and true facts. In the instant writ petition, petitioner has not disclosed the dismissal of W.P.(MD) No.20892 of 2015. According to them, petitioner has indulged in forum shopping.

4. Heard the learned counsel for the parties and perused the materials available on record.

5. As the facts involved in W.P.(MD) No.20892 of 2015 and the present writ petition W.P.No.28861 of 2016 are one and the same, this Court deems it fit to extract the contents made in

the former writ petition.

"In W.P(MD)No.16009 of 2015, third respondent herein/auction purchaser of the property, subject matter of sale certificate dated 29.03.2014 issued by the Indian Bank, Sivakasi Branch, Virudhunagar District, has sought for a Writ of Mandamus, directing the respondents 1 to 5 therein, to take physical possession of the said property and hand over the same, to the writ petitioner, by implementing the order made by the District Collector and District Magistrate, Virudhunagar District, first respondent therein, in Roc.No.E3/24710/2014 dated 02.12.2014.

2. Material on record discloses that pursuant to the sale certificate dated 29.03.2014, issued by the Indian Bank to Mr.N.Mariappan, the writ petitioner in W.P(MD) No.16009 of 2015, on 07.04.2014, a sale deed has been executed. On 14.08.2014, the District Magistrate and District Collector, Virudhunagar District, has passed an order, under Section 14 of the SARFAESI Act 2002, directing the Tahsildar, Sivakasi and the Assistant Superintendent of Police, Sivakasi, to take physical possession of the secured properties and documents relating thereto, and to forward the same to the Authorised Officer of the Secured Creditor/Chief Manager, Indian Bank, Sivakasi Branch, Sivakasi, under appropriate acknowledgement, within a period of one month, from the date of receipt of the letter dated 14.08.2014 of the District Collector under Section 14 of the Act.

3. The Tahsildar, Sivakasi, has been requested to submit a report of compliance, after executing the abovesaid order. The Superintendent of Police, Virudhunagar, and the Revenue Divisional Officer, Sivakasi, have been requested to see that the order passed by the District Magistrate and District Collector, Virudhunagar District, is executed, in accordance with the provisions of the SARFAESI Act, by rendering assistance and protection for the same.

4. Subsequently, as against the statutory action, the borrower has filed an appeal under Section 17 of the Act before the Debts Recovery Tribunal at Madurai. He has also sought for stay of all proceedings. Order dated 14.08.2014 of the District Magistrate cum District Collector, has been kept in abeyance. The Bank has moved the Debts Recovery Tribunal at Madurai, and after hearing the parties therein, I.A.SR.No.6814 of 2014 in S.A.SR.No.6813 of 2014 has been dismissed on 12.09.2014, by observing that after the dismissal of the I.A. by the Tribunal, there is no legal impediment to execute the

order dated 14.08.2014 passed under Section 14(1A) of the Act, and directions have been issued to the Tahsildar, Sivakasi, and Assistant Superintendent of Police, Sivakasi, to take appropriate action for immediate execution of the order passed under Section 14 (1) of the Act, and to submit a report. The Superintendent of Police, Virudhunagar and Assistant Collector, Sivakasi, have been requested to see that the order passed on 14.08.2014 has been executed in accordance with the provisions of the SARFAESI Act, by rendering necessary assistance and protection.

5. Material on record discloses that the borrower has preferred an appeal against the order dated 12.09.2014 passed by the Debts Recovery Tribunal, Madurai. The appellate Tribunal has disposed of M.A(SA) No.133 of 2014, without granting any injunction and thus, by order dated 02.12.2014, has confirmed the order dated 12.09.2014 of the Debts Recovery Tribunal, Madurai. Thereafter, the Debts Recovery Tribunal, Madurai, has dismissed S.A.No.303/2014, filed to set aside the order of the District Magistrate and Collector dated 14.08.2014. As against the said order, an appeal has been filed, under Section 18(1) of the SARFAESI Act, 2002, in AIR.No.650 of 2015 before the Debt Recovery Appellate Tribunal at Chennai.

6. The petitioner herein/Borrower has filed W.P.No.27679 of 2015, for a Writ of Mandamus, forbearing the Tahsildar, Sivakasi, Virudhunagar District, the 4<sup>th</sup> respondent therein, from implementing the order dated 25.08.2015 made in Roc.No.A1/12966/2014 passed under Section 14 of the SARFAESI Act. In the said writ petition, the petitioner has contended that questioning the order dated 21.07.2015 passed by the Debts Recovery Tribunal, Madurai, in S.A.No.198/2014 whereunder, the petitioner's application filed against the bank has been rejected, and that the petitioner has filed an appeal under Section 18 of the Act and pending disposal of the same, the Tahsildar has issued proceedings dated 25.08.2015. In the abovesaid circumstances, Writ of Certiorari has been filed, to quash the abovesaid proceedings.

7. Subsequently, the Tahsildar, Sivakasi, has issued a proceedings dated 09.10.2015, in Roc.No.A1/12966/2014, directing that possession should be handed over, failing which, action would be initiated with the assistance of the Police Department. This proceeding is the subject matter of W.P.No.32715 of 2015, wherein, the petitioner has sought for a Writ of Mandamus, forbearing the Tahsildar, Sivakasi, Virudhunagar District, not to execute the order dated 09.10.2015, and to forbear him

from proceeding under Section 14 of the SARFAESI Act, till the disposal of the appeal, under Section 18 of the Act, in AIR.No.650 of 2015, filed by the borrower, before the Debts Recovery Appellate Tribunal, Chennai.

8. After considering the submission that the borrower has made an application for waiver of payment of court fee, in the appeal, and that the said application was scheduled for hearing on 05.11.2015, a Hon'ble Division Bench vide order made in W.P.No.32715 of 2015 dated 14.10.2015, has passed the following order:-

'2.This writ petition is filed seeking a direction to forbear the fourth respondent/ Tahsildar, Sivakasi, Virudhunagar District, who is under an obligation to comply with the order dated 14.08.2014 passed by the first respondent/ District Magistrate and Collector, in an application filed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, (for short # SARFAESI Act#), from taking action, till the disposal of the petitioner's appeal (AIR No.650 of 2015) filed under Section 18 of the SARFAESI Act.

3.Learned counsel appearing for the petitioner submits that the petitioner has also made an application for waiving of the payment of Court fee and the said application is to be listed for hearing on 05.11.2015.

4.It is pertinent to point out that before taking decision in the waiver application, no application for interim relief can be entertained, inasmuch as cognizance of appeal can be taken either after the proper court fee is paid or payment is waived off. In the case on hand, the order dated 9th October, 2015 sought to be restrained in pursuance of the order of the first respondent dated 16th September, 2014 passed in exercise of power under Section 14 of the SARFAESI Act is to be examined by the appellate Tribunal. At this stage, we cannot adjudicate the issue and also pass any order, staying the action initiated by the Tahsildar in pursuance of the order passed by the District Magistrate during the pendency of the dispute before the appellate authority.

5.However, having regard the fact situation, we grant liberty to the petitioner to make an application for interim relief before the

Appellate Authority. If such an application is filed or the same is pending consideration, the Appellate Authority is directed to consider the same, on its own merits and in accordance with law, at the earliest, preferably within a period of two weeks.'

9.I.A.No.933 of 2015 in AIR.No.650 of 2015, has been filed before the Debts Recovery Appellate Tribunal, Chennai, to grant an interim injunction restraining the District Magistrate and Collector, Virudhunagar District, Virudhunagar, first respondent therein, from implementing the order dated 14.08.2014 pending disposal of AIR.No.650 of 2015.

10.On 30.10.2015, the Debts Recovery Tribunal, Chennai, has adjourned the matter to 05.11.2015. Material on record discloses that subsequently, the matter has been adjourned to 16.11.2015 and 09.12.2015 respectively. In the meanwhile, the Tahsildar, Sivakasi, Virudhunagar District, has issued another proceedings in Roc.No.A1/12966/2014, dated 14.11.2015, directing the borrower/petitioner, to remove all the movables, so as to enable the bank to take possession by 24.11.2015, failing which, appropriate action would be taken by the Police. As against the proceedings dated 14.11.2014, the petitioner/borrower has filed the present writ petition, to quash the same."

6. After hearing the learned counsel for the parties and the material on record, vide order dated 01.02.2016 in W.P.(MD) No.20892 of 2015, the Madurai bench of this Court at paragraph Nos.21 to 23 ordered as hereunder.

"21.In some cases, arguments have been heard and orders passed. Considering the fact that many appeals/applications have been listed before the Hon'ble Chair Person on 20.01.2016 and 21.01.2016 respectively, and when this Court vide order dated 07.12.2015 granted time to the petitioner/borrower to number the other appeal and move a stay application, nothing prevented the borrower from approaching the Registrar, Debts Recovery Appellate Tribunal(Southern Region), to number the appeal filed against the order in S.A.No.198/2014 dated 21.07.2015 and to seek for an interim order, against dispossession, even if any application for waiver had been made in the appeal, against the order in S.A.No.198/2014 dated 21.07.2015.

22.As rightly observed by the Hon'ble Division Bench in W.P.No.32715 of 2015, this Court cannot adjudicate the issue as to whether an interim order

can be granted, pending waiver, and it is left to the discretion of the Debts Recovery Appellate Tribunal. While passing an order dated 07.12.2015, indulgence has been granted by this Court, which has not been deliberately pursued. The petitioner has adopted forum shopping.

23. For the reasons stated supra, this Court is not inclined to accede to the prayer made in the writ petition and issue any Writ of Certiorarified Mandamus. Accordingly, the writ petition fails and the same is dismissed. No costs. Consequently, M.P (MD)No.1 of 2015 is closed."

7. As rightly contended by the learned counsel for the respondents, the writ petitioner has not disclosed true and proper facts about the nature of disposal of the writ petition. At paragraph No.12 of the supporting affidavit to W.P.No.28861 of 2016, filed in this Court, the petitioner has stated that the writ petition has been disposed of directing the parties to approach the Debts Recovery Appellate Tribunal, Chennai. But, it is not the correct position, as stated supra. Typed set of papers filed in support of the instant writ petition challenging the proceedings dated 12.08.2016 of the Tahsildar, Sivakasi, Virudhunagar District shows that earlier, in W.P.No.32715 of 2015, the petitioner has sought for a writ of mandamus, forbearing the Tahsildar, Sivakasi, Virudhunagar District from executing the order dated 09.10.2015 made in Na.Ka.A1/12966/2014 and to forbear the respondents therein from proceeding under Section 14 of the SARFAESI Act, until disposal of the Appeal under Section 18 of the SARFAESI Act against the order dated 25.08.2015 in AIR No.650 of 2015 filed by the petitioner before the Debts Recovery Appellate Tribunal, Chennai.

8. After considering the averments in W.P.No.32715 of 2015, a Hon'ble Division Bench, observed that before taking a decision in the waiver application, no application for interim relief can be entertained, inasmuch as cognizance of appeal can be taken, either after the proper court fee is paid or payment is waived off and in the abovesaid circumstances, held that it cannot adjudicate the issue and pass any order, staying the action initiated by the Tahsildar, in pursuance of an order passed by the District Magistrate, during the pendency of the dispute before the appellate authority, and in the abovesaid circumstances, the Hon'ble Bench has granted liberty to the borrower/petitioner to make an application for interim relief before the appellate authority and if any such application is filed or pending, the appellate authority has been directed to consider the same on its merits, and in accordance with law, at the earliest, preferably, within a period of two weeks.

Thereafter, I.A.No.933 of 2015 in AIR.No.650 of 2015, has been filed to grant injunction restraining the respondents from implementing the order dated 14.08.2014, and that the same has been adjourned on various dates.

9. Perusal of the order dated 12.08.2016 of the Tahsildar, Sivakasi, Virudhunagar District, the 4th respondent herein shows that based on the directions of the District Collector in proceeding RC.No.E3/24710/14 dated 14.08.2014, the Tahsildar, Sivakasi, Virudhunagar District, has directed the writ petitioner to hand over the secured property, to Indian Bank, Sivakasi Branch on 18.08.2016 at the instance of Police & Revenue Department. The petitioner has been called upon to remove the articles from the house and keep the building vacant, failing which legal actions would be initiated with the help of police. The 2nd respondent has only acted as per the directions of the Magistrate / District Collector's proceedings RC.No.E3/24710/14 dated 14.08.2015.

10. Proceedings dated 14.11.2015 have already been challenged before the Madurai Bench of Madras High Court by the writ petitioner in W.P.(MD) No.20892 of 2015, which has been dismissed.

11. As rightly contended by respondents 2 and 3, when challenge to the proceedings of Tahsildar, Sivakasi, Virudhunagar District dated 14.11.2015 has been dismissed by Madurai Bench of this Court, the writ petitioner has adopted forum shopping, by challenging the subsequent proceedings dated 12.08.2016 of the very same authority before this Court, by filing W.P.No.28861 of 2016. Conduct of the writ petitioner is not appreciable.

12. Record of proceedings shows that on 17.08.2016, when the writ petition came up for hearing, while ----- learned Additional Government Pleader took notice on behalf of respondents 1 and 4, Mr.Jayesh B. Dolia, learned counsel for the respondent bank and ordered notice to the 3rd respondent, returnable by 06.09.2016, a Hon'ble Division Bench of this Court has granted an order of status quo, subject to the condition that the writ petitioner depositing a sum of Rs.10 Lakhs before the 2nd respondent bank or or before 06.09.2016 and that the matter has been directed to be posted on 06.09.2016.

13. Mr.Jayesh B.Dolia, learned counsel for the 2nd respondent bank and Mr.Ferdinand, learned counsel for the 3rd respondent submitted that the interim order dated 17.08.2016 made in W.P.No.28861 of 2016, has not been complied with. Submission has been placed on record.

14. Taking note of the conduct and attitude in not

furnishing true and proper facts to this Court, forum shopping and the conditional order, the writ petitioner is not entitled to any equity and further indulgence from this Court. Hence, writ petition is dismissed. Interim order dated 17.08.2016, is vacated. For the reasons stated supra the writ petitioner deserves costs quantified at Rs.10,000/- to be paid, for the welfare of the children who require care and protection under the Juvenile Justice Act, 2015.

15. A sum of Rs.10,000/- is directed to be paid as Costs to the Director of Social Defence, Chennai, who shall deposit the same in appropriate account and expend the same for welfare of the children. Costs to be paid within one month from the date of receipt of a copy of this order, failing which, the Director of Social Defence, can take recourse under the Tamilnadu Revenue Recovery Act. The official respondents are directed to adhere to the time limit provided under Section 14 of the SARFAESI Act, 2002. Writ Miscellaneous Petition viz., WMP No.24943 of 2016 is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

1. The District Magistrate & Collector,  
Virudhunagar District,  
Virudhunagar.

2. The Authorised Officer of the Secured Creditor,  
& Chief Manager,  
Indian Bank,  
No.55, New Road, Sivakasi - 123.

3. Mr.N.Mariappan,

4. The Tahsildar,  
Sivakasi,  
Virudhunagar District.

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5. The Registrar,  
Debt Recovery Appellate Tribunal,  
No.55, Ethiraj Salai  
Chennai - 600 002.

+1cc to Mr.Aiyar and Dolia , Advocate, S.R.No.7295272952  
+1cc to Mr.BFS Legal, Advocate, S.R.No.73251  
+1cc to the Government Pleader, S.R.No.73318

mg (CO)  
md(05/01/2017)

W.P.No.28861 of 2016  
and WMP No.24943 of 2016



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