

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2016

CORAM

THE HON'BLE Mr. JUSTICE M.SATHYANARAYANAN

W.P.No.43036 of 2016
and
W.M.P.No.36886 of 2016

State Bank of India,
Stressed Assets Management Branch,
Raja Plaza, First Floor,
No.1112, Avinashi Road,
Coimbatore - 641 037,
Rep. By its Manager,
Mr.D.Suresh Babu

... Petitioner

-Vs-

1. The Sub-Registrar,
Mallasamudram,
Office of the Sub-Registrar,
Mallasamudram,
Tiruchengode Taluk,
Namakkal District.
2. M.S.Palanivel
S.o R.Sabapathi Gounder,
Door No.34, H Block,
17th Main Road, Annannagar West,
Chennai - 600 040.

... Respondents

This petition is filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the first respondent to receive, register and return the Rectification of Discharge Receipt dated 24.11.2016, to rectify the error in the Discharge Receipt dated 13.07.2016, registered as Doc.No.2076 of 2016 on the file of the first respondent, which was only a unilateral document within a time frame as may be specified by this Honourable Court.

For Petitioner	: Mr.Om Prakash, for M/s. Ramalingam and Associates
For Respondents	: Mr.R.Rajeswaran, Special Government Pleader for R1

O R D E R

By consent, the writ petition is taken up for final disposal.

2. The petitioner Bank, in the affidavit filed in support of the writ petition, would state that the second respondent is the promoter of one M/s.M.S.P.Paper Mill Private Limited, having office at Door No.34, H-Block, 17th Main Road, Anna Nagar West Extension, Chennai - 600 040 and availed various credit facilities from the petitioner's Siruthozil Branch at Chennai for the purpose of establishing the Company and the said Company was enjoying a total credit facilities to the limit of Rs.41,50,00,000/-. The said Company made a request for restructuring the limits and accordingly, the credit facilities were enhanced to Rs.62,92,00,000/- on 25.10.2013 and the second respondent is one of the guarantor and mortgagor of the said facilities and apart from extending of mortgage of various immovable properties as securities, the petitioner bank was also offered collateral securities in the form of four other immovable properties and equitable mortgage was created on 30.10.2013 and also registered as Document No.4049 of 2013 on the file of the first respondent. Subsequently, the above said Company committed default and action was initiated under the provisions of SARFAESI Act and the Company vide letter dated 24.08.2015 sought for No Objection Certification to sell some of the collateral properties including the additional securities in the petitioner Bank with an undertaking to deposit the proceeds in the petitioner Bank. The Company also made a request on 25.01.2016 for release of other landed properties and the petitioner Bank acted in a bonafide belief and issued No Objection Certificate dated 27.01.2016 calling upon the company to deposit the amount. Based upon the same, the 2nd respondent entered into an agreement of sale dated 28.01.2016 for sale of three properties in favour of A.Ramamurthi and R.Manickam and also confirmed the same by depositing Rs.15 lakhs received as advance and undertaking to deposit the balance of Rs.135 lakhs before 27.05.2016. The recovery proceedings were also initiated by filing O.A.No.442 of 2016 for recovery of Rs.73,01,03,749.44 and the petitioner Company also made a request for extension of time for making payment. Accordingly, a sum of Rs.135 lakhs was also paid and the petitioner Bank has also executed the discharge receipt on 13.07.2016 for part satisfaction on the claims and partial discharge of the properties and the said discharge receipt was registered as Document No.2076 of 2016 on the file of the first respondent. The petitioner found that the property shown as Item No.1 of the Schedule F of the O.A. is not a vacant land and is part of the factory land and came to know that fraud played by the 2nd respondent by obtaining the release

of the property and therefore, immediately took measures for restoring the same by rectifying the discharge receipt to exclude the property in respect of land bearing Survey Nos.33/1, 33/2 and 33/3 measuring an extent of 1.88 acres at Pillanatham Village, Thiruchengode Taluk, Namakkal District. Learned counsel for the petitioner would submit that the said document was presented for registration before the first respondent and it has been returned without making any endorsement and therefore, constrained to approach this Court by filing this writ petition.

3. Heard the submission of the learned counsel for the petitioner and Mr.R.Rajeswaran, learned Special Government Pleader who accepts notice on behalf of the first respondent.

4. It is relevant to extract paragraph No.14 of the affidavit which reads as follows:

"14. I further state that the petitioner Bank being put to show by such an embargo being created by the first respondent, inspite of the fact that the Rectification was executed and sought to be registered as there is an error which had occurred on account of the misdeeds of the second Respondent in making the Bank believe that the property sought to be released was only vacant land and suppressing the fact that the factory building and other fixtures are available there. The Petitioner reiterated their resolve to have the rectification registered stating that the first Respondent cannot refuse to register the same on the basis of pre-existing Sale Agreement and cannot seek to adjudicate on the rights of the parties, which only a civil court can entertain. The petitioner also sought for a written communication of the first respondent in refusing to receive the document for registration, which was not acceded to. The petitioner invited a Notary Public and got the fact of refusal recorded by the Notary public for record. The first Respondent has not even received the document for registration and refused to acknowledge or pass any order for refusal to register the document. The Original Rectification of Discharge Receipt, dated 24.11.2016, and the Demand Drafts favouring the first Respondent towards the stamp duty and registration fees have been returned back to the Petitioner, contrary to the provisions of the law. I am advised to state that the first Respondent is bound to register and return the

document after being paid with the required stamp duty and registration charges under the provisions of the Registration Act."

5. In the light of the stand taken by the petitioner, the first respondent is directed to entertain the rectification of the Discharge Receipt if the papers are otherwise in order and after putting the second respondent on notice, shall proceed further and pass orders in accordance with law within a period of six weeks from the date of receipt of a copy of this order and communicate the decision to the petitioner Bank as well as the second respondent.

6. The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsi

To

The Sub-Registrar,
Mallasamudram,
Office of the Sub-Registrar,
Mallasamudram, Tiruchengode Taluk,
Namakkal District.

+2cc's to M/s. Ramalingam and Associates, Advocate, S.R.No.72722
+1cc to the Government Pleader, S.R.No.72986

W.P.No.43036 of 2016

GM I(CO)
CA(05/01/2017)

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