

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2017

CORAM

THE HONOURABLE MR.JUSTICE K. RAVICHANDRABAABU

W.P.No.30737 of 2017

and

WMP.No.33641 of 2017

V.Srinivasan

S/o.S.Venkatraman

... Petitioner

versus

1.The Deputy General Manager

REPCO Bank

Rep. by its Managing Director

REPCO Tower, 33

North Usman Road

T.Nagar, Chennai-600 017.

2.The REPCO Bank

Tambaram Branch

Rep. by its Deputy General Manager

No.38/169, Annai Complex Ayyasamy Street,

West Tambaram, Chennai-600 045.

3.K.V.Ramachandran

Sastha Kudil

4.Smt.Thilagavathy Ramachandran

W/o.K.V.Ramachandran

5.Sri.R.Rajasekaran

S/o.Sri K.N.Ramachandran

...Respondents

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the 1st and 2nd respondents to release the petitioner as a surety in respect of secured Loan NO.697 and 698 in the 2nd respondent Branch.

For Petitioner : Mr.K.Sakthivel

O R D E R

This writ petition is filed with misconceived conception, as if this Court by exercising its jurisdiction under Article 226 of the Constitution of India, would convert itself as a Civil Court and decide as to whether the petitioner as a Guarantor, is

liable to the respondent Bank in respect of non-payment of loan amount by the fifth respondent/ Borrower, on the ground that the respondent Bank failed to take any action against the Borrower viz., the fifth respondent, to recover the dues. Undoubtedly, a pure and clear civil dispute arising out of contractual obligation between the parties viz., the petitioner as the Guarantor, the Bank as the lender and the fifth respondent as the borrower, is sought to be agitated by way of this writ petition.

2. The learned counsel for the petitioner seeks support from the order passed by the Hon'ble Supreme Court reported in AIR 1983 SC 848 (The Gujarat State Financial Corporation vs. M/s.Lotus Hotels Pvts. Ltd.), to contend that the present writ petition is maintainable before this Court under Article 226 of the Constitution of India.

3. A careful perusal of the said decision of the Hon'ble Supreme Court would show that the facts therein are totally different. It is seen that the respondents before the Hon'ble Supreme Court has approached the Gujarat State Financial Corporation an instrumentality of the State, and sought for loan, which though originally agreed to be given, was later refused. Therefore, the respondents therein filed a writ petition before the Gujarat High Court, which came to be allowed, followed by confirmation of the said order by the Division Bench. The Aggrieved party namely, the Gujarat State Financial Corporation took it on appeal, which was dismissed by the Hon'ble Supreme Court, by holding that if the statutory obligation is not exercised by the Corporation, the Court can issue a mandamus to exercise such Statutory obligation. Needless to say that the present facts and circumstances arising out of a contractual obligation between private parties, cannot be equated with the facts and circumstances of the above said case. Therefore, I find that the above said decision is not helping the petitioner in any manner.

4. Accordingly, this writ petition is dismissed as not maintainable, however, by granting liberty to the petitioner to agitate the matter before the competent Civil Court by filing appropriate proceedings. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

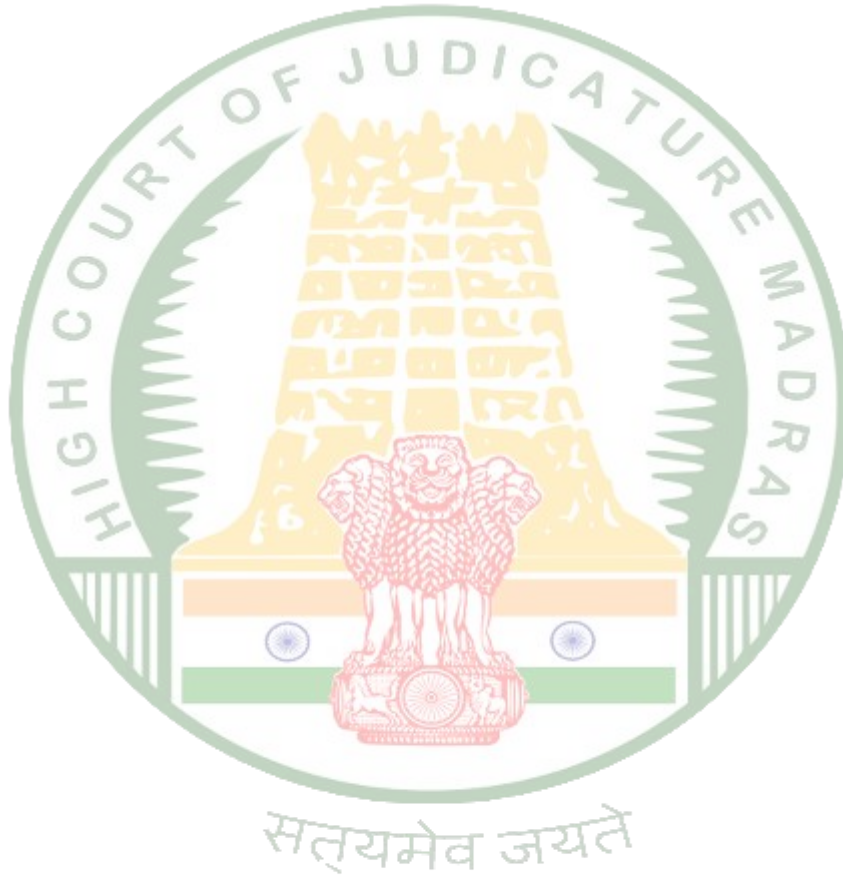
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To

+1 CC to Mr.K. Sakthivel, Advocate sr 84959.

W.P.No.30737 of 2017

SP(07/12/2017)



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