

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE TMT.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.11984 of 2017

and

WMP Nos.12867, 12868 & 18229 of 2017

Sheik Mohammed Nizar

... Petitioner

versus

1.Kamal Gupta

Managing Director

R.V. Steels & Power Pvt. Ltd.,

Flat No.A1 Vrindhavan Enclave

189, Lloyds Road, Gopalapuram

Chennai - 600 086

2.The Authorised Officer

Axis Bank Ltd.,

Southern Recovery Cell

2nd Floor Kammuthu Nilayam

No.192, Anna Salai

Chennai - 600 002

3.The Manager

SME Centre, Axis Bank Ltd.

Chennai - 600 001

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the entire records of possession Notice dated 17.12.2016 issued under Rule 8(1) and Section 13(2) read with Rule 9 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Security Interest Enforcement Rules, 2002, pursuant to the demand notice dated 16.09.2016 and quash the same in as far as this petitioner is concerned to the property in S.F.No.46 Mathur Village Ambathur Taluk, Tiruvallur District in Patta No.1703 situated in Madhavaram, Chennai - 600 060 and consequently, direct the petitioner herein to proceed with OTS settlement by directing the 2nd respondent to permit the petitioner to purchase 50% of the share of the property belonging to the 1st respondent Kamal Gupta upon the consideration agreed to between the petitioner and 2nd respondent bank on 27.03.2017 and letter dated 15.04.2017 towards OTS settlement and balance consideration to

Mr.Kamal Gupta 1st respondent.

For Petitioner : Mr.K.Balakrishnan
for Mr.P.Sivamani

For Respondents : Mr.O.S.Karthikeyan for R2 & R3

O R D E R
(made by S.MANIKUMAR, J.)

Material on record discloses that, earlier, the guarantor/mortgagor, has filed W.P.No.773 of 2017, challenging a notice dated 17.12.2016 issued under Section 13(2) of the SARFAESI Act, 2002 and the consequential notice issued under Section 13(4) of the Act r/w Rules 8(1) and 9 of the SARFAESI Rules, 2002, in respect of a property bearing land and building comprised in Survey Nos.46/2A1A1, 46/2A1A2, 46/2A1A3 and 46/2A1A4 (as per Patta Nos.1700, 1701, 1702, 1703 of No.46, Mathur Village, Ambattur Taluk, Tiruvallur District, situated in 200 ft. inner ring road, Madhavaram, ad measuring a total extent of 204 cents (88740 sq.ft.) with equally undivided share thereto absolutely owned and possessed by the petitioner.

2. Adverting to the above challenge and following the decisions in Precision Fastenings v. State Bank of Mysore, reported in 2010(2) LW 86, Union Bank of India v. Satyawati Tondon reported in 2010(5) LW 193 (SC) and Saraspathy Sundararaj v. Authorised Officer and Assistant General Manager, State Bank of India reported in (2010) 5 LW 560, this court dismissed the writ petition. Registry has been directed to return the original possession notice, dated 17.12.2016, issued under Section 13(4) of the SARFAESI Act, 2002, so as to enable the petitioner therein, to approach the forum.

3. Thereafter, the petitioner/guarantor has approached the Debts Recovery Tribunal and made submissions inter alia that the guarantor is not liable to pay, till the properties of the borrower are brought for auction, and in the present writ petition, has contended that, without appreciating the grounds of challenge, the Debts Recovery Tribunal, directed the borrower and the guarantor to pay a sum of Rs.1,00,00,000/- (Rupees one crore only) on or before 20.04.2017. Though the date and number of the SARFAESI Appeal said to have been filed before the Debts Recovery Tribunal are not furnished in the supporting affidavit to the instant Writ Petition No.11984/2017, Mr.O.S.Karthikeyan, learned counsel for Axis Bank/respondents No.2 and 3, submitted that, after the dismissal of W.P.No.773 of 2017 dated 11.01.2017, in the month of January, 2017 S.A.No.24/2017 has been filed on the file of Debts Recovery Tribunal No.III.

4. It could be deduced that pending disposal of SARFAESI Appeal No.24/2017, and when directions have been issued by the Tribunal to the borrower/guarantor to pay a sum of Rs.1,00,00,000/- on or before 20.04.2017, instant writ petition has been filed on 24.04.2017 for a writ of certiorarified mandamus to quash the possession notice dated 17.12.2016 issued under Rule 8(1) and Section 13(2) read with Rule 9 of SARFAESI Act, 2002 and SARFAESI Rules, 2002, pursuant to the demand notice dated 16.09.2016.

5. Along with the writ petition, writ petitioner/guarantor has sought for stay of demand notice dated 16.09.2016 and possession notice dated 17.12.2016, issued by the bank. Initially Ms.P.Bagyalakshmi, Advocate, has filed the writ petition.

6. Record of proceedings shows that on 05.05.2017, in W.M.P. No.12868/2017 in W.P. No.11984 of 2017, a Hon'ble Division Bench of this court, passed the following order:

"Notice to the respondents returnable in two weeks.

Private Notice is also permitted.

There shall be an order of interim stay on condition that the petitioner paying a sum of Rs.50,00,000/- (Rupees fifty lakhs only) directly to the Bank, without prejudice to the rights of the parties, within a period of two weeks from today, failing which, interim stay granted shall stand automatically vacated without any further reference to this court."

7. S.A. No.24 of 2017 has been filed by Mr.R.Abdul Mubeen and others, as counsel for applicant. When the said matter came up on 22.05.2017, before the Tribunal, learned counsel on record, in the present writ petition, submitted that in the case on hand, case bundle has been handed over to him, in the morning and that he would like to file change of vakalat, by 24.05.2017. He has also submitted that if time is granted, he would be able to proceed with the matter. Declining to accept the said request, the Tribunal, on 22.05.2017 in S.A.No.24/2017, passed the following order.

"SA No.24/2017 22.05.2017

Ld. counsel for the respondent bank is present. This SA is filed challenging the possession Notice dated 17.12.2016 issued by the respondent bank for recovery of sum of Rs.5,68,34,887/-.

No representation on behalf of the appellant. One counsel by name Mr.P.Sivamani, has submitted that the bundle has been handed over to him today in the morning and would like to file change of vakalat by day after tomorrow if time is granted and that if

further time is granted, he would be able to proceed in the matter.

This is a matter which is heard at length and it is posted today for disposal while Ld. counsel appearing for the appellant has conceded to that there are no infirmities in the issuance of the subject impugned possession notice which fact has been evidenced by the actions of the respondent bank filed through its counter and typed set of documents. Ld. counsel appearing for the respondent bank has also demonstrated its actions as warranted under law and submits that there are no infirmities and the matter is posted to day only as a last opportunity to the appellant to go and negotiate with the respondent bank and look for some settlement. Whereas the appellant had not approached the respondent bank for any settlement, but had contemplated to change his counsel.

In the circumstances, as there are no merits in the appeal, the same is liable to be dismissed.

Accordingly, this SA stands dismissed, however without costs."

8. When S.A.No.24/2017 filed challenging the possession Notice dated 17.12.2016 has been dismissed on 22.05.2017 for the reasons stated supra, suppressing the dismissal of the same, writ petitioner has filed W.M.P. No.14390/2017 for extension of time, for a period of four weeks, for complying with the order made in W.M.P. No.12868 of 2017 in W.P. No.11984 of 2017 dated 05.05.2017. Learned counsel on record in the present writ petition No.11984 of 2017, who got change of vakalat, in the writ petition, and appeared in S.A.No.24 of 2017, has failed to bring it to the notice of the Hon'ble Division Bench of this court that challenge to possession notice made before the Tribunal, in S.A.No.24 of 2017 has reached finality, and S.A.No.24 of 2017 has been dismissed on 22.05.2017. When the High Court was not appraised of the dismissal, a Hon'ble Division Bench of this court, on 24.05.2017, made the following order:

"Considering the averments stated and to give a final opportunity, time granted by this court on 05.05.2017 is extended by a further period of four weeks from today.

2. The petition is ordered."

9. On this day, when the matter came up for hearing, Mr.O.S.Karthikeyan, learned counsel appearing for Axis Bank/respondents 2 and 3, submitted that, firstly, the conditional order has not been complied with. Secondly, there is suppression of material fact of dismissal of the earlier Writ Petition No.773 of 2017, filing of SARFAESI Appeal No.24 of 2017

on the file of the Debts Recovery Tribunal - IIII, Chennai, in the supporting affidavit to W.P. No.11984 of 2017, and thirdly, the learned counsel, who appeared before the DRT in S.A.No.24 of 2017, ought to have brought to the notice of this court about the finality of the proceedings, stated supra.

10. Per contra, Mr.K.Balakrishnan, representing the learned counsel on record, submitted that there is no suppression of material fact and that the decision in W.P. No.773 of 2017 has been referred to in paragraph No.20 of the affidavit. According to the learned counsel, though the number and details of SARFAESI Appeal have not been specifically averred, details of the orders passed in SARFAESI Appeal have been mentioned in the supporting affidavit to the writ petition No.11984 of 2017. Learned counsel on record, submitted that non-furnishing of adequate details in the supporting affidavit to the present writ petition, was an inadvertent mistake and not willful.

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

11. Prayer made in the writ petition is, for a Writ of Certiorarified Mandamus, to call for the entire records of possession Notice dated 17.12.2016 issued under Rule 8(1) and Section 13(2) read with Rule 9 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Security Interest Enforcement Rules, 2002, pursuant to the demand notice dated 16.09.2016 and quash the same insofar as the petitioner is concerned, in respect of property in S.F.No.46 Mathur Village Ambathur Taluk, Tiruvallur District in Patta No.1703 situated in Madhavaram, Chennai - 600 060 and consequently, for a direction to the petitioner to proceed with OTS settlement by directing the 2nd respondent to permit the petitioner to purchase 50% of the share of the property belonging to the 1st respondent Kamal Gupta upon the consideration agreed to between the petitioner and the 2nd respondent bank on 27.03.2017 and letter dated 15.04.2017 towards OTS settlement and balance consideration to Mr.Kamal Gupta, 1st respondent.

12. First of all, when challenge to Notice dated 16.09.2016 issued under Section 13(2) of the SARFAESI Act, 2002 and consequential action under Section 13(4) dated 17.12.2016, was made in W.P. No.773 of 2017, a Hon'ble Division Bench of this court dated 11.01.2017, has already dismissed the challenge, holding that the writ petition is not maintainable and directed the petitioner therein to approach the forum.

13. Though copy of the order has not been enclosed in the typed set of papers filed to the instant writ petition, at paragraph No.20, there is a reference to the same. There is also

a reference to the orders passed by the the Tribunal in the SARFAESI Appeal preferred.

14. What transpires from the averments made in the supporting affidavit and the events stated supra, is that, in S.A.No.24 of 2017, the Tribunal has directed the petitioner/guarantor and the borrower Kamal Gupta to pay a sum of Rs.1,00,00,000/- on or before 20.04.2017. While keeping the S.A. No.24 of 2017 alive, and without complying with the said order, the petitioner has filed the instant writ petition No.11984 of 2017 on 24.04.2017, challenging the very same possession notice dated 17.12.2016. Thus, on 24.04.2017, there are two parallel proceedings, one, S.A.No.24 of 2017 challenging the possession notice issued under Section 13(4) of the Act before the Tribunal and the other, W.P.No.11984 of 2017 challenging the very same proceedings, before this court.

15. Before the Tribunal, on 22.05.2017, learned counsel on record, has sought for time. However, perusal of the order dated 22.05.2017 indicates that the learned counsel himself has conceded that there are no infirmities in the issuance of the impugned possession notice. When attention of the learned counsel on record was invited to the above said fact, he disputed that no such statement was made to the Tribunal, but time alone was sought.

16. Be that as it may, when the learned counsel for the petitioner was aware of dismissal of S.A.No.24 of 2017 filed challenging the possession notice dated 17.12.2016, on 24.05.2017, during vacation, when the writ petitioner moved W.M.P.No.14390 of 2017 for extension of time, to comply with the interim order made in W.M.P. No.12868 of 2017 dated 05.05.2017, dismissal of S.A.No.24 of 2017, has not been brought to the notice of this court.

17. From the sequence of events, it could be deduced that the petitioner having failed to succeed in the first attempt in W.P.No.773 of 2017 dated 11.01.2017, has approached the Tribunal in S.A.No.24 of 2017, could not comply with the interim orders granted therein, and keeping S.A. No.24 of 2017 alive, reverted to the High Court, filed the instant writ petition No.11984 of 2017 dated 24.04.2017, challenging the very same possession notice dated 17.12.2016, and got an interim order on 05.05.2017, which fact has not been brought to the notice of the Tribunal. Thus, it is apparent on the face of record that, he has been forum shopping, both in the Tribunal and High Court, to obtain interim orders on the very same cause, challenging the possession notice issued under Section 13(4) of the Act. Contention of the learned counsel for the respondent bank that, both the interim order dated 05.05.2017 and extension order dated 24.05.2017, have not been complied with, is not disputed. If the

petitioner is aggrieved over the interim order, passed by the Tribunal, remedy lies before the appellate authority, under the statute. There is absolutely no bonafide on the part of the writ petitioner/guarantor. Remedy under Article 226 of the Constitution of India is equitable in nature, and not to be extended to a person, who has indulged in forum shopping, suppression of material facts and thus abuse of process of law.

18. On the aspect of suppression, this court deems it fit to consider few cases.

18.1. In *Arunima Baruah v. Union of India* reported in 2007 (6) SCC 120, the Hon'ble Apex Court, held as follows:

"12.It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.

13. In *Moody v. Cox* [(1917) 2 Ch. 71: (1916-17) All ER Rep 548 (CA)], it was held: (All ER pp. 555 I-556 D)

"When one asks on what principle this is supposed to be based, one receives in answer the maxim that anyone coming to equity must come with clean hands. I think the expression "clean hands" is used more often in the textbooks than it is in the judgments, though it is occasionally used in the judgments, but I was very much surprised to hear that when a contract, obtained by the giving of a bribe, had been affirmed by the person who had a primary right to affirm it, not being an illegal contract, the courts of equity could be so scrupulous that they would refuse any relief not connected at all with the bribe. I was glad to find that it was not the case, because I think it is quite clear that the passage in *Dering v. Earl of Winchelsea* [(1787) 1 Cox Eq Cas 318: 2 Bos & P 270], which has been referred to, shows that equity will not apply the principle about clean hands unless the depravity, the dirt in question on the hand, has an immediate and necessary relation to the equity sued for."

14. In *Halsbury's Laws of England*, 4th Edn., Vol. 16, pp. 874-76, the law is stated in the

following terms:

"1303. He who seeks equity must do equity.-In granting relief peculiar to its own jurisdiction a court of equity acts upon the rule that he who seeks equity must do equity. By this it is not meant that the court can impose arbitrary conditions upon a plaintiff simply because he stands in that position on the record. The rule means that a man who comes to seek the aid of a court of equity to enforce a claim must be prepared to submit in such proceedings to any directions which the known principles of a court of equity may make it proper to give; he must do justice as to the matters in respect of which the assistance of equity is asked. In a court of law it is otherwise: when the plaintiff is found to be entitled to judgment, the law must take its course; no terms can be imposed.

* * *

1305. He who comes into equity must come with clean hands.-A court of equity refuses relief to a plaintiff whose conduct in regard to the subject-matter of the litigation has been improper. This was formerly expressed by the maxim 'he who has committed iniquity shall not have equity', and relief was refused where a transaction was based on the plaintiff's fraud or misrepresentation, or where the plaintiff sought to enforce a security improperly obtained, or where he claimed a remedy for a breach of trust which he had himself procured and whereby he had obtained money. Later it was said that the plaintiff in equity must come with perfect propriety of conduct, or with clean hands. In application of the principle a person will not be allowed to assert his title to property which he has dealt with so as to defeat his creditors or evade tax, for he may not maintain an action by setting up his own fraudulent design.

The maxim does not, however, mean that equity strikes at depravity in a general way; the cleanliness required is to be judged in relation to the relief

sought, and the conduct complained of must have an immediate and necessary relation to the equity sued for; it must be depravity in a legal as well as in a moral sense. Thus, fraud on the part of a minor deprives him of his right to equitable relief notwithstanding his disability. Where the transaction is itself unlawful it is not necessary to have recourse to this principle. In equity, just as at law, no suit lies in general in respect of an illegal transaction, but this is on the ground of its illegality, not by reason of the plaintiff's demerits."

18.2. In *Udayami Evam Khadi Gramodyog Welfare Sanstha v. State of U.P.*, reported in 2008 (1) SCC 560, the Hon'ble Apex Court held as follows:

"15. A writ remedy is an equitable one. A person approaching a superior court must come with a pair of clean hands. It not only should not suppress any material fact, but also should not take recourse to the legal proceedings over and over again which amounts to abuse of the process of law. In *Advocate General, State of Bihar v. M/s. Madhya Deh Khair Industries and Anr.* [1980 (3) SC 311], this Court was of the opinion that such a repeated filing of writ petitions amounts to criminal contempt."

18.3. In *Amar Singh vs. Union of India & Others* reported in 2011(7) SCC 69, on the aspect of a litigant approaching the court, with unclean hands, at, paragraphs 53 to 57, and at, paragraph 59, considered several judgments. Finally at paragraph No.60, extracted a paragraph from *Dalip Singh's* case:

"53. Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts. Courts held that such litigants have come with "unclean hands" and are not entitled to be heard on the merits of their case.

54. In *Dalglish v. Jarvie* {2 Mac. & G. 231,238}, the Court, speaking through Lord Langdale and Rolfe B., laid down:

"It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that

injunction; and it is no excuse for him to say that he was not aware of the importance of any fact which he has omitted to bring forward."

55. In *Castelli v. Cook* {1849 (7) Hare, 89,94}, Vice Chancellor Wigram, formulated the same principles as follows:

"A plaintiff applying ex parte comes under a contract with the Court that he will state the whole case fully and fairly to the Court. If he fails to do that, and the Court finds, when the other party applies to dissolve the injunction, that any material fact has been suppressed or not properly brought forward, the plaintiff is told that the Court will not decide on the merits, and that, as he has broken faith with the Court, the injunction must go."

56. In the case of *Republic of Peru v. Dreyfus Brothers & Company* {55 L.T. 802,803}, Justice Kay reminded us of the same position by holding:

"...If there is an important misstatement, speaking for myself, I have never hesitated, and never shall hesitate until the rule is altered, to discharge the order at once, so as to impress upon all persons who are suitors in this Court the importance of dealing in good faith with the Court when ex parte applications are made."

57. In one of the most celebrated cases upholding this principle, in the Court of Appeal in *R. v. Kensington Income Tax Commissioner* {1917 (1) K.B. 486} Lord Justice Scrutton formulated as under:

"and it has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts - facts, now law. He must not misstate the law if he can help it - the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect statement."

59. The aforesaid requirement of coming to Court with clean hands has been repeatedly reiterated by this Court in a large number of cases. Some of which may be noted, they are: *Hari Narain v. Badri Das* - AIR 1963 SC 1558, *Welcome Hotel and others v. State of A.P. and others* - (1983) 4 SCC 575, *G. Narayanaswamy Reddy (Dead) by LRs. and another v. Government of Karnataka and another* - JT 1991(3) SC 12: (1991) 3 SCC 261, *S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. and others* - JT 1993 (6) SC 331: (1994) 1 SCC 1, A.V.

Papayya Sastry and others v. Government of A.P. and others - JT 2007 (4) SC 186: (2007) 4 SCC 221, *Prestige Lights Limited v. SBI* - JT 2007(10) SC 218: (2007) 8 SCC 449, *Sunil Poddar and others v. Union Bank of India* - JT 2008(1) SC 308: (2008) 2 SCC 326, *K.D.Sharma v. SAIL and others* - JT 2008 (8) SC 57: (2008) 12 SCC 481, *G. Jayashree and others v. Bhagwandas S. Patel and others* - JT 2009 (2) SC 71 : (2009) 3 SCC 141, *Dalip Singh v. State of U.P. and others* - JT 2009 (15) SC 201: (2010) 2 SCC 114.

60. In the last noted case of Dalip Singh (supra), this Court has given this concept a new dimension which has a far reaching effect. We, therefore, repeat those principles here again:

"For many centuries Indian society cherished two basic values of life i.e. "satya"(truth) and "ahimsa (non-violence), Mahavir, Gautam Budha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre- independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving

their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

18.4. In *Kishore Samrite vs. State of U.P. & Others* reported in 2013(2) SCC 398, at paragraphs 32 to 36, the Hon'ble Supreme Court held as follows:

"32. With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.

33. The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under [Article 136](#) of the Constitution. While approaching

the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make "full and true disclosure of facts". (Refer : [Tilokchand H.B. Motichand & Ors. v. Munshi & Anr.](#) [1969 (1) SCC 110]; [A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Anr.](#) [(2012) 6 SCC 430]; [Chandra Shashi v. Anil Kumar Verma](#) [(1995) SCC 1 421]; [Abhyudya Sanstha v. Union of India & Ors.](#) [(2011) 6 SCC 145]; [State of Madhya Pradesh v. Narmada Bachao Andolan & Anr.](#) [(2011) 7 SCC 639]; [Kalyaneshwari v. Union of India & Anr.](#) [(2011) 3 SCC 287]).

34. The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim *jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiores*, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.

35. No litigant can play 'hide and seek' with the courts or adopt 'pick and choose'. True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the court. {[K.D. Sharma v. Steel Authority of India Ltd. &](#)

Ors. [(2008) 12 SCC 481].

36. Another settled canon of administration of justice is that no litigant should be permitted to misuse the judicial process by filing frivolous petitions. No litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be used as a licence to file misconceived and frivolous petitions. (*Buddhi Kota Subbarao (Dr.) v. K. Parasaran*, (1996) 5 SCC 530)."

18.5. In *Tilokchand and Motichand & Others v. H.B.Munshi* and another reported in 1969 (1) SCC 110, the Hon'ble Apex Court held that the court would not ordinarily permit a party to pursue two parallel remedies, in respect of the same single matter.

18.6. In *Prestige Lights Ltd. v. State Bank of India* reported in 2007 (8) SCC 449, at paragraph Nos.33 to 35, the Hon'ble Apex Court, held as follows:

33. It is thus clear that though the appellant- Company had approached the High Court under *Article 226* of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under *Article 226* of the Constitution. Over and above, a Court of Law is also a Court of Equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

34. The object underlying the above principle has been succinctly stated by Scrutton, L.J., in *R v. Kensington Income Tax Commissioners*, [(1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136], in the following words: "(I)t has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts, not law. He must not misstate the law if he can help it. The Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts,

and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside, any action which it has taken on the faith of the imperfect statement". (emphasis supplied)

35. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

36. In the case on hand, several facts had been suppressed by the appellant-Company. Collusive action has been taken with a view to deprive the respondent- Bank from realizing legal and legitimate dues to which it was otherwise entitled. The Company had never disclosed that it had created third party's interests in the property mortgaged with the Bank. It had also shifted machinery and materials without informing the respondent-Bank prejudicially affecting the interest of the Bank. It has created tenancy or third party's right over the property mortgaged with the Bank. All these allegations are relevant when such petitioner comes before the Court and prays for discretionary and equitable relief. In our judgment, the submission of the respondent-Bank is well-founded that appellant is not entitled to ask for an extraordinary remedy under [Article 226](#) of the Constitution from the High Court as also equitable remedy from this Court under [Article 136](#) of the Constitution. A party, whose hands are soiled, cannot hold the writ of the Court. We, therefore, hold that the High Court was not in error in refusing relief to the appellant-Company.

19. On the aspect of forum shopping, we deem it fit to consider few decisions:

(i) In *Roxann Sharma vs. Arun Sharma* reported in (2015) 8 SCC 318, at paragraph No.19, the Hon'ble Apex Court, observed that Forum shopping or court shopping requires to be firmly dealt with.

"We also take serious note of the Father, without notifying or taking the permission of the Civil Judge, leaving its jurisdiction along with Thalbir. Prima facie this undermines the authority of the court and it may even tantamount to contempt of court. Section 26 of the G and W Act has been violated and that too by a person who has not been appointed as the guardian. Relocation is now a well-known legal concept. Since movement of persons from one place to another or one State to another State of the country or even from one country to another country of the globe is no longer a rarity. Very often it becomes necessary because the parent having custody of the child finds a more suitable employment somewhere else. The entitlement of the left behind spouse has, therefore, to be jurally investigated. The Mother may want to relocate to the United States where she can be very gainfully employed as against the Father who has not been able to disclose any income or sources of regular income. But this is not the case or stage before us. Here, the Father ought not to have left the jurisdiction of the court in Goa which was discharging its duties as *parens patriae*. This seems to have been completely lost sight of and instead the learned Single Judge has given premium to the unauthorised relocation. We have already mentioned Criminal Petition No.87 of 2013 which was disposed of by permitting the Mother to meet Thalbir; but keeping in view the pendency of proceedings in Goa, the court rightly did not interfere with or alter or modify any of the orders passed by the court in Goa. Forum shopping or court shopping requires to be firmly dealt with. The second learned Single Judge ought to have kept in mind that it was the Father who has started proceedings in Goa where the Mother was also then residing having, prima facie, been constrained to give up her employment in California, US to be in a position to look after her infant son Thalbir. The coordinate Benches must respect prior orders."

(ii) In *Tamil Nadu Mercantile Bank Shareholders Welfare Association vs. S.C.Sekar & Ors.* reported in 2009 (2) SCC 784,

at paragraph No.51, the Hon'ble Apex Court, held as follows:

"51. The superior courts of this country must discourage forum shopping. A person seeking equity must do equity. A party cannot take recourse to a machination which amounts to abuse of process of court."

(iii) In Chetak Construction Ltd. vs. Om Prakash and others reported in (1998) 4 SCC 577, at paragraph No.16, the Hon'ble Apex Court observed as follows:

"We certainly, cannot approve of any attempt on the part of any litigant to go "forum shopping". A litigant cannot be permitted 'choice' of the 'forum' and every attempt at "forum shopping" must be crushed with a heavy hand."

Taking note of the conduct of the petitioner who has indulged in forum shopping and the decisions of the Hon'ble Supreme Court, while dismissing the writ petition, we impose a cost of Rs.15,000/- on the petitioner to be paid to Sivananda Gurukulam, GST Road, Kattankolathur, within a period of three weeks from the date of receipt of a copy of this order, failing which, the District Collector, Chennai, would initiate proceedings under the Revenue Recovery Act for enforcement of order. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

asr

WEB COPY

To

1.The District Collector Chennai

2.The Sivananda Gurukulam
GST Road, Kattankolathur

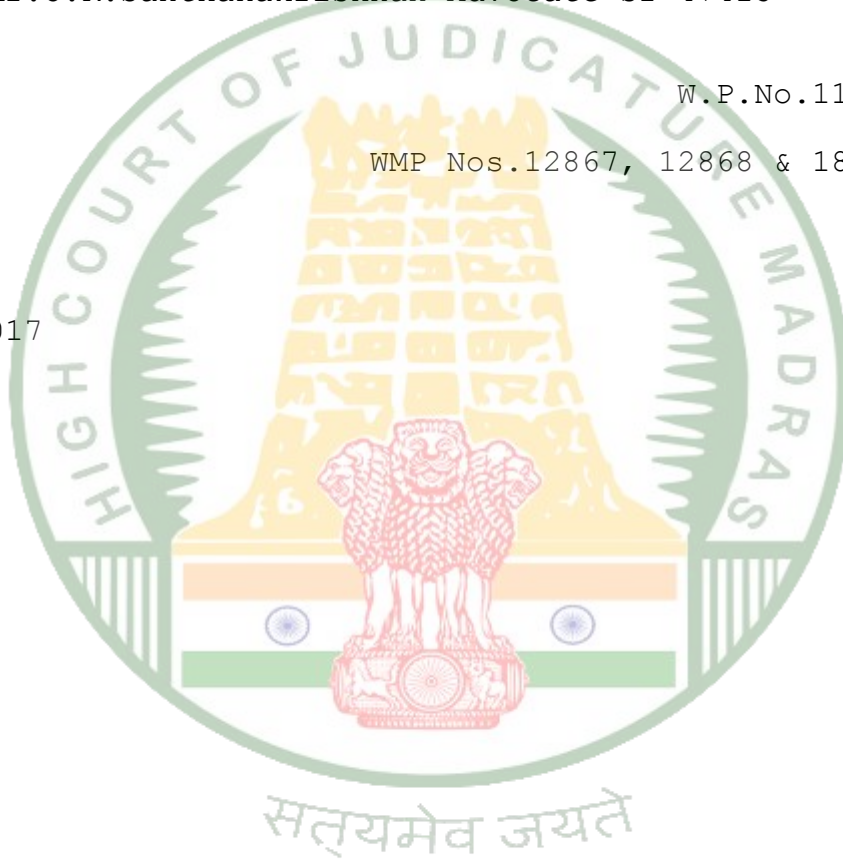
+1 cc to Mr.P.Sivamani Advocate sr 47776

+1 cc to Mr.O.R.Santhanakrishnan Advocate sr 47415

W.P.No.11984 of 2017
and

WMP Nos.12867, 12868 & 18229 of 2017

kgk(co)
aa03/08/2017



WEB COPY