

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.05.2017

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.13166 of 2017 &
WMP No.14159/2017

G.Mohamed Dhastaheer ...Petitioner

v.

1.The Authorized Officer,
State Bank of India,
Perambalur Town Branch,
Perambalur District.

2.The District Collector,
Perambalur, Perambalur District. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the Debts Recovery Tribunal-III, Chennai in s.A.No.149/2017 dated 16.05.2017 and quash the same only so far as non-granting of order of removal of lock and seal of the residential property of the petitioner situate at Survey No.428/5 (old No.137/1-15.55.0) to an extent of 0.0255 sq.mtrs. Olaijadi Village, Kunnam Taluk, Perambalur District and consequently direct the respondents bank to remove the lock and seal on the petitioner's residential property.

For Petitioner :M/s.Dakshayani Reddy
for M/s.P.Nethaji

For R-1 :Mr.C.Mohan

For R-2 :Mr.R.Vijayakumar, AGP

ORDER

[Order of the court was made by M.M.SUNDRESH, J.,]

Heard M/s.Dakshayani Reddy for M/s.P.Nethaji, learned counsel appearing for the petitioner, Mr.C.Mohan, learned counsel appearing for the first respondent, and Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the second respondent.

2. Against the petitioner, proceedings have been initiated by the respondents for non payment of the dues. The petitioner approached the Debts Recovery Tribunal, III, Chennai in S.A.No.149 of 2017, dated 16.05.2017, challenging the order of the District Collector, Perambalur, by granting an order of Statusquo. It appears that much prior to the aforesaid order, possession has been taken by the respondent.

3. The learned counsel appearing for the petitioner made fervent plea only on equity. It is submitted by the learned counsel that in view of the ensuing Ramzon, the petitioner may be given the possession subject to the further order to be passed by the Debts Recovery Tribunal, III, Chennai. The learned counsel further submits that both the movable and immovable belongs to the petitioner and his family is in the premises. The petitioner would show his bona fide by making further payment. According to the learned counsel for the petitioner, the Tribunal could not be moved in view of the Panticy of time.

4. The learned counsel for the respondent would submit that the petitioner owes a sum of Rs.9,95,577/- as of today. Though, the conditional order is complied with, considering the facts and circumstances of the case, unless and until the petitioner shows his bona fide, by making substantial amount, the request made, need not be considered. Thus, the learned counsel submits that atleast a further sum of Rs.2,00,000/- will have to be directed to be paid by the petitioner for considering the request made by the petitioner, which, even after compliance would be without prejudice to the further contention before the Tribunal.

5. Considering the above and taking note of the peculiar facts of the case, we permit the petitioner to take possession from the respondent on condition of payment of Rs.2,00,000/- in addition to the compliance of Rs.2,00,000/- ordered by the Tribunal. With the aforesaid sum of Rs.2,00,000/-, Rs.1,00,000/- will have to be paid immediately and on such payment, the respondent shall hand over possession to the petitioner and the remaining amount will have to be paid within a further period of four weeks. This order is passed without prejudice to the further order to be passed by the Debts Recovery Tribunal, III, Chennai in S.A.No.149 of 2017.

6. With these observations, the writ petition is disposed of. It is made clear that if the conditional order has not been complied with, the Tribunal is at liberty to proceed on merits by ignoring the order passed in this writ petition and without prejudice to the contentions to the earlier parties before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Rj /KP

To

The District Collector,
Perambalur,
Perambalur District.

+ 1 cc to Mr.P.Nethaji, Advocate Sr.37910

+ 1 cc to Mr.King and Partridge, Advocate Sr.37862

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EU 25.5.17

सत्यमेव जयते

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