

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.24328 of 2017

and W.M.P.No.25738 of 2017

1. M/s.Emayam Enterprises
Rep. by its Proprietor
R.Veeramani.

2. R.Veeramani

3. M/s.Emayam Aqua Products
Rep. by its Proprietor
V.Meena Devi.

4. V.Meenadevi Petitioners

vs.

M/s.Central Bank of India,
Asset Recovery Branch,
No.48/49, Ground Floor,
Montieth Road,
Egmore, Chennai - 600 008.
Rep. by its authorized Officer/Chief Manager,
Mr.M.V.Ramachandraiah ... Respondent

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari, to call for the records culminated in the impugned order dated 06.02.2017 unnumbered M.P.No...../17 in CrI.M.P.No.6962 of 2016 passed by the Hon'ble Metropolitan Magistrate and quash the same.

For Petitioners : Mr.P.V.Balasubramaniam

ORDER

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

M/s.Emayam Enterprises, rep. by its Proprietor, Mr.R.Veeramani, Chennai and M/s.Emayam Aqua Products, rep. by its Proprietor, Mrs.V.Meena Devi, Chennai, petitioners 1 and 3 are the borrowers.

2. Mr.R.Veeramani and Mrs.V.Meen Devi, petitioners 2 and 4, have mortgaged properties, as guarantors. Loan amount was not repaid. Hence, Central Bank of India, Asset Recovery Branch, Chennai, respondent herein, has issued a notice under Section 13(2) of the SARFAESI Act, 2002 dated 03.02.2014, demanding repayment of dues, within sixty days, failing which, they would proceed against the secured asset.

3. According to the petitioners, after the notice, under Section 13(2) of the Act, they approached the bank and explained the circumstances under which, repayment could not be made, as per the schedule. They also sought for the statement of accounts. Request was not responded. Central Bank of India, Asset Recovery Branch, Chennai, filed O.A.No.48 of 2017 before the Debts Recovery Tribunal No.II, Chennai, for recovery of Rs.2,19,21,307.04p, claiming to be dues under various loan accounts, with future interest thereon, at various rates, for each loan, per annum with monthly rests + 2% per annum penal interest for each loan from 16.10.2016, till the date of recovery in full.

4. In O.A.No.48 of 2016, bank has prayed for sale of hypothecated stock and movables detailed in Schedule 'A' and 'C' therein; Sale of hypothecated machinery in Schedule 'B', 'D' and 'E'; Sale of mortgaged immovable property detailed in schedule 'F' and 'G' and to appropriate the sale proceeds, after defraying the sale expenses towards the amount, due to the respondent bank and to grant a certificate of recovery.

5. After hearing the parties, the tribunal, vide order dated 21.07.2017 allowed O.A.No.48 of 2016, as hereunder.

"20.In the result, the application [OA] is allowed as under :

- a) the applicant bank to recover the sum of Rs.2,19,213,07.04 [Rupees Two Crore Nineteen Lakh Twenty One Thousand Three Hundred and Seven and paise Four Only] with interest @ 9% p.a. [simple] from the date of institution of the OA till realisation and also costs of the OA from the defendants jointly and severally and in case of default, by sale of the Schedule mentioned mortgaged/hypothecated properties;
- b) Issue recovery certificate in favour of the applicant bank in terms of this final order;
- c) Applicant is directed to file the costs memo within two weeks of the receipt of this order and
- d) Communicate a copy of this order to the

parties concerned".

6. Petitioners have contended that being aggrieved by the order made in O.A.No.48 of 2016 dated 21.07.2017 on the file of Debts Recovery Tribunal -II, Chennai, steps have been taken to challenge the same. Respondent bank has preferred Crl.M.P.No.6962 of 2016 under Section 14 of the SARFAESI Act, 2002, to take possession of the property mortgaged by the 3rd and 4th petitioners. Petitioners have contended that no notice was issued to them by the District Magistrate / District Collector and thus, no opportunity was given. On 22.07.2016, in the application filed under Section 14 of the SARFAESI Act, 2002, the District Magistrate / District Collector has passed an order.

7. Being aggrieved, the petitioners have filed Crl.R.C.No.597 of 2017. On the failure to comply with a conditional order passed in Crl.R.C.No.597 of 2017, the same was dismissed.

8. According to the petitioners, left with no other alternative, setting out the entire gamut of facts, a petition dated 01.02.2017 was filed before the learned Chief Metropolitan Magistrate, Chennai, to review and recall the order dated 22.07.2016. On 06.02.2017, Registry of the Chief Metropolitan Magistrate, Chennai returned the petition, as not maintainable. Being aggrieved by the docket entry, instant writ petition has been filed, to quash the same and to pass such orders.

9. Supporting the prayer sought for, Mr.P.V.Balasubramaniam, learned counsel for the petitioners, reiterated that the order of the learned Chief Metropolitan Magistrate dated 22.07.2016, is without notice and amounts to violation of the principles of natural justice. Refusing to consider the review petition, is erroneous. Learned Chief Metropolitan Magistrate, ought to have considered that as per the Arbitral award, sale deed in favour of respondents 3 and 4, has been set aside, and that title declared in favour of a third party, is under challenge before this Court and having regard to the same, the learned Chief Metropolitan Magistrate, ought to have reviewed, and recalled the order dated 22.07.2016.

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

10. In the year 2005, the 1st petitioner had availed a term loan of Rs.25 Lakhs from the respondent bank. A further sum of Rs.42 Lakhs as overdraft facility has been availed on 21.09.2013, which is inclusive of the Term loan of Rs.25 Lakhs. Petitioners had also availed two term loans for a sum of Rs.60 Lakhs and 15 Lakhs on 09.07.2012 and 01.03.2013,

respectively, and an enhanced cash credit limit of Rs.30 Lakhs on 24.10.2013. Petitioners 3 and 4 have offered their property, as security for the abovesaid loans availed from the bank. As there was default, bank has initiated action under the provisions of SARFAESI Act, 2002. Third parties have initiated arbitration proceedings against respondents 3 and 4, seeking for a declaration of title to the property, mortgaged with the bank, and to set aside the registered sale deed. Claims have been allowed and against the award, petitioners 3 and 4 are stated to have filed O.P.No.323 of 2011 under Section 34 of the Arbitration and Conciliation Act, 1996. Award has been passed, setting aside the sale deed in favour of the respondents 3 and 4.

11. Material on record discloses that bank has filed a petition under Section 14 of the SARFAESI Act, 2002, seeking for assistance. After considering the contents of the declaration, District Magistrate / District Collector has passed an order dated 22.07.2016, directing assistance. Being aggrieved by the same, petitioners have filed Crl.R.C.No.597 of 2017.

12. From the averments made in paragraph No.17 of the supporting affidavit to the instant writ petition, it could be seen that a conditional order has been passed in Crl.R.C.No.597 of 2007 and on account of the failure to comply with the same, Crl.R.C.No.597 of 2017, has been dismissed. Contending inter alia that the petitioners have no other alternative remedy, they have filed a petition dated 01.02.2017 in Crl.M.P.No.6962 on the file of the learned Chief Metropolitan Magistrate, Chennai, for review and recall of the order dated 22.07.2016. Said petition, has been returned with the following endorsement

"The 1st petitioner himself has admitted in his petition that he and the 4th petitioners are the borrowers of the loan obtained from the Respondent Bank and the petition filed by the Bank u/s 14 of the SARFAESI Act was allowed by this Court on 22.07.2016. As per Section 17 of the Act the borrowers can file an appeal only before the DRT within a prescribed period of time and they have no right to file any petition before this Court."

13. Against the said endorsement, instant writ petition has been filed for a certiorari, as stated supra. As rightly observed, as against the orders passed under Section 14 of the SARFAESI Act, 2002, borrowers/guarantors have to file an application under Section 17 (1) of the said Act, which reads thus.

"17. Right to appeal: (1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the

secured creditor or his authorised officer under this Chapter, may make an application alongwith such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken: PROVIDED that different fees may be prescribed for making the application by the borrower and the person other than the borrower."

14. Recourse taken by the Bank, by invoking Section 14 of the SARFAESI Act, 2002, for assistance to take possession, is a step-in-aid of the measures, under Section 13(4) of the Act, "taking possession of secured assets".

15. Material on record discloses that instead of filing an application under Section 17 (1) of the Act, petitioners have chosen to file Crl.R.C.No.597 of 2017. Conditional order has not been complied with, resulted in dismissal of the criminal revision petition.

16. In the supporting affidavit to the instant writ petition, petitioners have not disclosed the details of the interim order, passed in Crl.R.C.No.597 of 2017. When the petitioners have already approached, this Court by invoking the revisional jurisdiction and when Crl.R.C.No.597 of 2017, has been dismissed, we are of the view that by a circuitous method, they have filed a Miscellaneous petition, in Crl.M.P.6962 of 2016 on the file of learned Chief Metropolitan Magistrate, Allikulam, Chennai, to recall and review the order dated 22.07.2016, passed by the learned Magistrate. There is no provision in the SARFAESI Act, 2002, to seek for review or recall of an order passed by the District Magistrate / District Collector under Section 14 of the SARFAESI Act, 2002. Despite the same, still the petitioners have chosen to file an application for the abovesaid prayer and when the same was returned, pointing out that such Miscellaneous Petition is not maintainable, contending inter alia that there is no other alternative and efficacious remedy, instant writ petition has been filed under Article 226 of the Constitution of India, with a prayer to issue a writ of certiorari, calling for the records culminated in the impugned order dated 06.02.2017 in unnumbered M.P.No...../17 in Crl.M.P.No.6962 of 2016 passed by the Hon'ble Metropolitan Magistrate and to quash the same.

17. Having chosen to file a revision viz., Crl.R.C.No.597 of 2017, before this Court, by invoking revisional jurisdiction and suffered an adverse order, it is not open to the petitioners to invoke the remedy under Article 226 of the Constitution of India and reagitate the same subject matter, which in our view is nothing but an abuse of process of law.

18. Remedy under Article 226 of the Constitution of India is equitable in nature. On the facts and circumstances,

equity cannot be extended to the petitioners, who have indulged in abuse of process of law, and this court deems it fit to consider few cases.

(a) 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."

(b). 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."

(c). 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 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."

(d). 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)."

(e) On the aspect of alternate remedy, 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.

In the light of the above decisions, we are of the view that there is absolutely, no merit in the writ petition, and deserves to be dismissed.

19. For the reasons stated supra, writ petition is dismissed. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1 The Authorized Officer/Chief Manager,
Central Bank of India,
Asset Recovery Branch,
No.48/49, Ground Floor,
Montieth Road,
Egmore, Chennai - 600 008.

2 The Chief Metropolitan Magistrate,
Allikulam Commercial Complex,
Chennai.

+1cc to M/s.BFS Legal Associates, SR.No.65796

W.P.No.24328 of 2017
and W.M.P.No.25738 of 2017

SDR 01.11.2017

सत्यमेव जयते
WEB COPY