

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3/10/2017

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MRS.JUSTICE R.SURESH KUMAR

Writ Petition No.15321 of 2017

M/s. Suryaa Dairy Farm
rep. Through its Proprietor
Mr.A.P.Venkatachalam
No.33 Annamalai Street
Ammamet
Salem 636 003.

... Petitioner

Vs

1. The Registrar
Debt Recovery Appellate Tribunal
Chennai.
2. The Authorised Officer
Indian Overseas Bank
6/671 Car Street
Salem.
3. The Branch Manager
Indian Overseas Bank
6/671 Car Street
Salem.
4. The Chairman
Indian Overseas Bank
Central Office
762 Anna Salai, P.B.No.3765
Chennai 600 002.

5. Mr.Balachandar

6. Mr.Suresh Kumar ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of mandamus forbearing the first and second respondents from interfering with the petitioner's peaceful possession and enjoyment of the schedule mentioned property till the disposal of A.I.R.(SA) No.105 of 2011 in I.A.No.1356 of 2010 in I.A.No.888 of 2010 in S.A.No.237 of 2008 pending on the file of the third respondent.

For Petitioner ... Mr.K.Rajasekaran
For respondent ... Mrs.Ananda Gomathi
for Indian Overseas Bank
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O R D E R

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

Borrower/petitioner, who has defaulted in making payment, has filed S.A.No.237 of 2008, challenging sale. Debt Recovery Tribunal, Madurai, has dismissed S.A., for default, on 9/7/2010. Petitioner has filed I.A.Nos.178 of 2011 and 309 of 2012, respectively, for restoration, and to condone the delay in filing the application. Based on the orders of this Court, made in W.P.Nos.13456, 8381 and 12970 of 2012, appeal has been restored, along with the condone delay petition and thereafter, condone delay petition has been heard and dismissed. Against which, W.P.No.15809 of 2015 has been filed. Vide, order dated 16/6/2015, a Hon'ble Division Bench of this Court, directed the Debt Recovery Appellate Tribunal, Chennai, to take up the appeal S.A.No.105 of 2011 and to dispose of the same, on merits, after providing due opportunity to the respective parties.

2. When the said appeal was pending before the Debt Recovery Appellate Tribunal, Chennai, contending inter alia that respondents 3 and 4/Branch Manager, Indian Overseas Bank, Salem and The Chairman, Indian Overseas Bank, Chennai, respectively, are interfering with the peaceful possession and enjoyment of the subject property, instant writ petition has been filed for a mandamus, forbearing the first and second respondents, herein, from interfering with the petitioner's peaceful possession and enjoyment of the schedule mentioned property, till the disposal of A.I.R.(SA) No.105 of 2011 in I.A.No.1356 of 2010 in I.A.No.888 of 2010 in S.A.No.237 of 2008 pending on the file of the third respondent.

3. Record of proceeding shows that vide order, dated 9/8/2017, this Court has passed the following order:-

"On 20/6/2017, a Hon'ble Division Bench of this Court, while ordering notice to the respondents, granted interim order of status-quo, subject to payment of Rs.8,00,000/-, towards the loan account by the petitioner, within a period of three weeks.

2. On 10/7/2017, when the writ petition came up for further hearing, Ms.Ananda Gomathy, learned counsel for the respondents 2 to 4 submitted that interim order, dated 20/6/2017, passed by this Court, has not been complied with.

3. On the submission of the learned counsel for the respondents 2 to 4 that the auction purchaser is in possession, we directed the respondents 2 to 4, to file counter as to how the auction purchaser came into possession.

4. Today, when the matter came up for hearing, Mr.S.Patrick, one of the learned counsel on record, submitted that though on three occasions, a sum of Rs.8,00,000/- (Rupees Eight lakhs only) was rendered, Bank refused to accept. There is no representation on behalf of the respondents 2 to 4, to refute the same.

5. On behalf of the auction purchaser/fifth respondent, Mr.M.Sudhan, seeks time to file counter.

6. Post on 21/8/2017."

4. Learned counsel for the petitioner submitted that the above said sum, has been deposited. Mrs.Anandha Gomathi, learned counsel for the Indian Overseas Bank, acknowledges the said submission. However, she submitted that when a statutory appeal in A.I.R. (SA) No.105 of 2011, is pending, on the file of the Debts Recovery Appellate Tribunal, Chennai, instant writ petition filed with the prayer, forbearing the first and second respondents from interfering with the petitioner's peaceful possession and enjoyment of the schedule mentioned property till the disposal of A.I.R.(SA) No.105 of 2011 in I.A.No.1356 of 2010 in I.A.No.888 of 2010 in S.A.No.237 of 2008 pending on the file of the third respondent, is not maintainable. She further submitted that it is always open to the writ petitioner, to seek for appropriate interim relief, in the pending AIR (SA) No.105 of 2011.

5. Though the learned counsel for the petitioner made submissions that there was interference with the peaceful possession of the property by the respondents and prayed for issuance of a writ of mandamus, we are not inclined to delve into the same. But we are in agreement with the learned counsel for the respondents 2 to 4, that in pending AIR No.105 of 2011, the petitioner can always seek for appropriate interim orders.

6. In view of the above, writ petition is dismissed. Liberty is granted to the writ petitioner, to work out his remedy, in the manner known to law. Writ of mandamus is an extraordinary remedy, which the Courts should not grant for mere asking. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

mvs

To

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Debt Recovery Appellate Tribunal
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Chennai 600 002.

+1 cc to Mr.K.Rajasekaran Advocate sr 71115

+1 cc to M/s.Ananda Gomathy Advocate sr 70985

W.P.No.15321 of 2017

mn(co)

aa09/11/2017