IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE T.RAVINDRAN

W.P.No.1032 of 2018

and WMP No.1253 of 2018

Smt.Saraswathi ... Petitioner

vs.

1. The Authorised Officer,
IDBI Bank Ltd., Opp. to St. John's School,
Trichy Road,
Coimbatore.

2. Mrs.M.Hemasree
3. V.Bhaskar ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the respondent bank to pay the security / caution deposit paid by the petitioner for a sum of Rs.10,50,000/- (Rupees Ten Lakhs Fifty Thousand Only) as the petitioner is willing to vacate the tenancy premises situated at No.244/2B, Flat No.207, Block No.D, 2nd Floor, Marigold Apartment, Reheja Enclave, Race Course, Coimbatore - 641 018.

For Petitioner : Mr.Kavikannan

For Respondents : Mr.K.Balamurali (for R1)
Mr.G.Thyagarajan (for R2 & R3)

ORDER

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

Claiming herself to be a tenant under respondents 2 and 3 herein in respect of the property located at Door No.244/2B, Flat No.207, Block No.D, 2nd Floor, Marigold Apartment, Reheja Enclave, Race Course, Coimbatore - 641 018, from June 2010 and paid a sum of Rs.10.50 Lakhs to the landlords / respondents 2 and 3, as security/caution deposit, and further contending that the lease agreement is in force, and coming to know of the proceedings initiated by the bank against the respondents 2 and 3 for the default in payment of loan, instant writ petition, has been filed for a writ of mandamus, directing the authorised officer, IDBI Bank Limited, Coimbatore, 1st respondent to pay security/caution deposit of Rs.10.50 Lakhs to her.

2. Petitioner has further contended that a suit in O.S.No.1263 of 2013, has been filed, on the file of learned Principal District Munsif, Coimbatore, for a permanent injunction against the landlords / respondents 2 and 3. It is also her contention that earlier, a prospective purchaser, Mr.Harishankar, came forward to purchase the subject property mortgaged with the bank in which, she is a tenant and he agreed to pay Rs.10 Lakhs to her, being security/caution deposit, paid to respondents 2 and 3, but the bank did not accept the proposal.

3. Petitioner has further contended that she is ready and willing to vacate the premises, no sooner the security/caution deposit of Rs.10.50 Lakhs is paid, either by the bank or by prospective buyer.

4. Record of proceedings shows that on 22.01.2018, notice was ordered to respondents, through Court and privately, returnable on 05.02.2018. Bank has filed a counter. Subsequently, on 15.02.2018, we passed the following order.

> "Though instant writ petition is filed seeking for a direction in the nature of Writ of Mandamus, directing the respondent bank to pay the security/caution deposit paid by the petitioner, namely, a sum of Rs.10,50,000/-, is not maintainable, in the light of the decision of the Hon'ble Supreme Court in Federal Bank Limited Vs. Sagar Thomas and others, reported in AIR 2003 SC 4325, upon hearing the learned counsel for the parties, to give a quietus to the dispute between the parties, we record as hereunder.
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> 2. After notice, opposing the prayer sought for by the petitioner, bank/first respondent herein has filed a counter affidavit.
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> 3. During the course of hearing, Mr.G.Thyagarajan, learned counsel for respondents 2 and 3 submitted that in August 2017, there was a prospective purchaser to buy the subject property under mortgage with the bank for a sum of Rs.1,10,00,000/- and that the prospective purchaser was also willing to pay a sum of Rs.10,50,000/- to the tenant. According to him, the tenant wanted to vacate the premises, on receipt of the advance amount of Rs.10,50,000/-, which could not be paid by the respondents 2 and 3/landlords.
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> 4. Though contentions have been made in paragraph No.10 of the supporting affidavit filed to the instant writ petition that the bank/first respondent herein has not accepted the said proposal and returned the said proposal to the prospective purchaser in the month of August 2017, the same has not been refuted by the bank.
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> 5. However, Mr.V.Suresh, learned counsel for the

bank/first respondent herein, submitted that, if the borrowers/respondents 2 and 3 would secure the prospective purchaser to buy the subject property for a sum of Rs.1,10,00,000, as averred, with an undertaking to pay Rs.10,50,000/- to the tenant/writ petitioner, an affidavit of undertaking by the borrowers/prospective purchaser be filed along with a demand draft for the said value.

6. Mr.G.Thyagarajan, learned counsel for respondents 2 and 3, requires two weeks time. Post on 01.03.2018."

5. Today, when the matter came up for hearing, based on the affidavit dated 27.02.2018, filed by Mr.M.Hemasree, 2nd respondent, on behalf of 3rd respondent also, Mr.G.Thyagarajan, learned counsel for the respondents 2 and 3 submitted that borrowers require three months time to pay the loan amount to the bank. Learned counsel further submitted that respondents 2 and 3 have no objection to sell the property directly, but the upset price be fixed not less than Rs.1.25 Crores.

6. Responding to the above, Mr.K.Balamurali, learned counsel for the Authorised Officer, IDBI Bank India Limited, Coimbatore, 1st respondent submitted that earlier, in W.P.No.22846 of 2017, when the respondents 2 and 3, sought for a mandamus, directing the bank to conduct the auction at the earliest, by fixing a minimum upset price of Rs.1 Crore, to sell the house and property or to permit them to sell the property to the prospective purchasers for realisation of sale proceeds directly to the bank, submission was made by the bank that upset price of Rs.1 Crore will not be reduced, if any subsequent sale notice, to be issued by the bank.

7. Learned counsel for the bank further submitted that since the subject property is in dispute, he is not in agreement for fixing the upset price of Rs.1.25 Crores, as prayed for, by the respondents 2 and 3 / borrowers. Submission is placed on record.

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

9. Petitioner/Tenant is willing to vacate the premises at Door No.244/2B, Flat No.207, Block No.D, 2nd Floor, Marigold Apartment, Reheja Enclave, Race Course, Coimbatore - 641 018, on condition that either the bank or the prospective buyer, pays Rs.10.50 Lakhs, which according to her is the security/caution deposit made with the landlords / respondents 2 and 3.

10. In Federal Bank Limited Vs. Sagar Thomas and others, reported in AIR 2003 SC 4325, Hon'ble Supreme Court held that writ against the bank is not maintainable. Petitioner/tenant, who has paid advance to the landlords, has no statutory or legal right to seek for refund from the bank, by filing a writ petition.

11. Writ of mandamus cannot be issued merely because a person is praying for. One must establish the legal right first and then he must seek for a prayer to enforce the said right. If there is

failure of duty by the authorities or inaction, one can approach the Court for a mandamus. The said position is well settled by in series of decisions.

(a) In the decision reported in (1996) 9 SCC 309 (State of U.P. and Ors. v. Harish Chandra and Ors.) in paragraph 10, the Apex Court held as follows:

> 10. ...Under the Constitution a mandamus can be issued by the court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and the said right was subsisting on the date of the petition....

(b) In the decision reported in (2004) 2 SCC 150 (Union of India v. S.B. Vohra) the Supreme Court considered the said issue and held that 'for issuing a writ of mandamus in favour of a person, the person claiming, must establish his legal right in himself. Then only a writ of mandamus could be issued against a person, who has a legal duty to perform, but has failed and/or neglected to do so.

(c) In the decision reported in (2008) 2 SCC 280 (Oriental Bank of Commerce v. Sunder Lal Jain) in paragraphs 11 and 12 the Supreme Court held thus,

> 11. The principles on which a writ of mandamus can be issued have been stated as under in The Law of Extraordinary Legal Remedies by F.G. Ferris and F.G. Ferris, Jr.:
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> Note 187.-Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.
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> Note 192.-Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the

performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

Note 196.-Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the court, subject always to the well-settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and should, look to the larger public interest which may be concerned-an interest which private litigants are apt to overlook when striving for private ends. The court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

12. When a Writ of Mandamus can be issued, has been summarised in Corpus Juris Secundum, as follows:

“Mandamus may issue to compel the person or official in whom a discretionary duty is lodged to proceed to exercise such discretion, but unless there is peremptory statutory direction that the duty shall be performed mandamus will not lie to control or review the exercise of the discretion of any board, tribunal or officer, when the act complained of is either judicial or quasi-judicial unless it clearly appears that there has been an abuse of discretion on the part of such Court, board, tribunal or officer, and in accordance with this rule mandamus may not be invoked to compel the matter of discretion to be exercised in any particular way. This principle applies with full force and effect, however, clearly it may be made to appear what the decision ought to be, or even though its conclusion be disputable or, however, erroneous the conclusion reached may be, and although there may be no other method of review or correction provided by law. The discretion must be exercised according to the established rule where the action complained has been arbitrary or capricious, or based on personal, selfish or fraudulent motives, or on false information, or on total lack of authority to act, or where it amounts to an evasion of positive duty, or there has been a refusal to consider pertinent evidence, hear the parties where so required, or to entertain any proper question concerning the exercise of the discretion, or where the exercise of the discretion is in a manner entirely futile and known by the officer to be so and there are other methods which it adopted, would be effective." (emphasis supplied)

13. In the light of the rival contentions between the bank and the borrowers/respondents 2 and 3 and inasmuch as there is no constitutional/statutory right, to be enforced by the petitioner / tenant, against bank, writ petition is misconceived. Accordingly, writ petition is dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

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To

The Authorised Officer,
IDBI Bank Ltd., Opp. to St. John's School,
Trichy Road,
Coimbatore.

+1 cc to Mr.M.Kavikannan, Advocate SR.NO. 16642

+1 cc to Mr.Shivakumar, Advocate SR.NO. 16902

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JK 09/03/18