

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.2072 of 2018
and W.M.P.No.2588 of 2018

Canara Bank,
Head Office:
Debenture Trustee Department,
Executor, Trustee & Taxation Section,
B.G.S.E. Towers,
51, 1st Cross, J.C.Road,
Bangalore - 560 027.

... Petitioner

vs.

1. The District Collector,
Office of the District Collector,
Thiruvallur District.
2. The Tahsildar,
Thiruvallur,
Thiruvallur District.

... Respondents

Prayer: WRIT Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Mandamus, directing the respondents to treat the certified copy of registered Assignment Deed dated 23.03.1978 and the Certified copy of the Sale Deed bearing Document No.4532/P41/2009 executed in favour of the Hindustan Photo Films Manufacturing Company dated 29.05.2009 as sufficient documents and dispose of the Application pending under Section 14 of the SARFAESI Act to take physical possession of the property mortgaged by the petitioner.

For Petitioner : Mr.M.Sakthivel
for Mr.S.Indumathi Ravi

For Respondents : Mr.SR.Rajagopal
Additional Advocate General

ORDER

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

Canara Bank, Debenture Trustee Department, Executor, Trustee & Taxation Section, Bangalore - 560 027, petitioner herein, has filed the instant writ petition for a Mandamus, directing the respondents herein, to treat the certified copy of the registered Assignment Deed dated 23.03.1978 and the Certified copy of the Sale Deed bearing Document No.4532/P41/2009 executed in favour of Hindustan Photo Films Manufacturing Company dated 29.05.2009, as sufficient documents and to dispose of the Application pending under Section 14 of the SARFAESI Act, to take physical possession of the property mortgaged by the petitioner.

2. Supporting the prayer sought for, the petitioner has contended that the said deed of Assignment dated 23.03.1978 was executed between Tamil Nadu Small Industries Development Corporation Limited (SIDCO) in favour of the Company. From 1.6.74 onwards, besides maintenance of the developed plots, other estates were transferred by the Government under G.O.Ms.No.720, Ind.(Spl.) dated 17.5.1974 to State Industries Promotion Corporation of Tamil Nadu Limited, (SIPCOT). By another G.O.Ms.No.959, Industries Department, dated 23.7.76, estates were further transferred to SIDCO from 1.8.76, as an agent of the Government. The company had applied for assignment of the developed plot No.60 (SP) at Ambattur, for construction of buildings and erection of machinery and equipment, for the manufacture of photographic sensitized materials which was approved by SIDCO.

3. Learned counsel for the petitioner further contended that the 2nd respondent directed the petitioner to submit the original documents for verification and that the petitioner submitted the originals of all the documents listed above, except Items 5,7,9,11,24 and the BIFR Order. It was clearly explained to the Tahsildar, Thiruvallur, the 2nd respondent herein, that the petitioner was in possession of the following original documents and failed to submit the same by oversight:

- (i) Trust Deed (Item 5)
- (ii) Memorandum of Hypothecation (Item 7)
- (iii) Registration of charge (Item 9) and
- (iv) Statement of Accounts (Item 24),

According to the learned counsel for the petitioner there was no requirement to submit the original order copy of BIFR. Assignment Deed was with SIDCO from 1.8.1976, on the day, when charge was taken by SIDCO, as an Agent of the Government. In the year 1988, the company sought permission from SIDCO, for mortgage of the plot, for availing financial assistance. On

22.6.1988 SIDCO issued a No Objection, permitting the company to mortgage their interest, in the above mentioned developed plot allotted to the Trustee, for availing financial assistance from the petitioner's Debenture Holders and Capital Lenders.

4. On behalf of the Bond holders, the petitioner Trustee, sought for the original assignment deed, vide their letter dated 1.7.1988. SIDCO vide their letter dated 10.08.1988 informed the petitioner that they are holding the registered Assignment Deed pertaining to the mortgaged property and further informed that they shall be holding the same on behalf of the petitioner as well.

5. Subsequent to the default committed by the company and upon filing Section 14 before the District Magistrate/Collector, the 2nd respondent insisted upon the production of the original assignment deed. Hence, the petitioner vide its letter dated 16.05.2017 called upon SIDCO to hand over the original registered assignment deed. SIDCO, vide communication dated 14.09.2017 informed the petitioner that though the original assignment deed was very much available with SIDCO, the same was not traceable, in their office due to long passage of time and shifting of the office of SIDCO several times, after issuance of letter dated 10.08.1988, thus confirming the custody of the original registered Assignment Deed. SIDCO has regretted its inability to produce or furnish the said Assignment Deed. SIDCO has confirmed that the original registered Sale Deed bearing document No.4532/P41/2009 was obtained by the company from the Sub-Registrar's office on 11.01.2010 and that the said registered Sale Deed was very much with the company. In the above circumstances, the petitioner has filed a Supplementary Petition on 4.10.2017 with the District Collector, Thiruvallur District, the 1st respondent, stating that it shall not be able to produce the BIFR order and the original assignment deed, explaining in detail the above facts, for consideration and to pass appropriate orders. The said supplementary application is pending adjudication. सत्यमेव जयते

6. On the prayer sought for, we directed Mr.J.Ramesh, learned Additional Government Pleader, to take notice.

7. Responding to the notice, Mr.S.R.Rajagopal, learned Additional Advocate General assisted by Mr.J.Ramesh, learned Additional Government Pleader, submitted that though in R.C.No.1708/2017A1, dated .05.2017, the Tahsildar, Ambattur, second respondent herein, has requested for production of the following documents,

- (i) Trust Agreement (3)
- (ii) Memorandum of Hypothecation (6)
- (iii) Memorandum of Hypothecation (7)
- (iv) Form No.8 (9)

(V) Assignment deed (10)
(vi) Board for Industrial and Financial (Pg.No.244)
(vii) Bank Statement, they have not been submitted, instead, the petitioner has chosen to file the present writ petition.

8. Learned Additional Advocate General further submitted that, if the Registered Assignment Deed dated 23.03.1978 and certified copy of the Sale Deed bearing Document No.4532/P41/2009, are submitted to the Tahsildar, Ambattur, Thiruvallur District, the second respondent herein, appropriate orders on merits would be passed in the application dated 23.02.2017, filed under Section 14 of the SARFAESI Act, 2002. Submission of the learned Additional Advocate General, is placed on record.

9. The petitioner is directed to submit the certified copy of the Registered Assignment Deed dated 23.03.1978, and certified copy of the Sale Deed bearing Document No.4532/P41/2009, executed in favour of Hindustan Photo Films Manufacturing Company dated 29.05.2009, to the Tahsildar, Ambattur, Thiruvallur District, within two weeks from today, if not submitted earlier. The District Collector-District Magistrate, Thiruvallur District, first respondent herein, shall pass suitable orders as per Section 14 of the SARFAESI Act, 2002, within a period of four weeks thereafter, taking note of the parameters in Section 14 of the SARFAESI Act, 2002.

10. With the above directions, this writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

dm

To

1. The District Collector,
Office of the District Collector,
Thiruvallur District.

2. The Tahsildar,
Thiruvallur, Thiruvallur District.

+1cc to the Government Pleader, S.R.No.8711

W.P.No.2072 of 2018
and

W.M.P.No.2588 of 2018

CS/12/02/18