

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.09.2018  
Delivered on : 06.09.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.Nos.19302 & 17197 of 2018 and  
W.M.P.Nos.22709 & 20464 of 2018

W.P.No.19302 of 2018:

1. M/s.Muthumani Agro Faarms,  
No.3, 1<sup>st</sup> Floor, Municipal Building,  
Paramathi Road, Namakkal,  
rep through its Managing Partner,  
M.Prakash
2. K.Ravikumar
3. K.Maran
4. R.Selvaraj
5. S.Ganesan

.. Petitioners

Vs.

1. Bank of Baroda,  
Namakkal Branch,  
Paramathi Road,  
Namakkal.
2. M.Murugan
3. M.Manimegalai
4. The Joint Sub Registrar-II,  
Namakkal Sub Registrar Office,  
Mohanur Road, Namakkal.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of mandamus directing the 1<sup>st</sup> respondent Bank to receive the remaining claim amount as per comprise sanction dated 29.12.2017 and to issue a NOC in favour of the petitioners for the registration of the pending Document No.53 to 57 of 2014 on the file of Sub Registrar Joint-II, Namakkal and to discharge the mortgage pertaining to the properties purchased by the petitioners herein.

For Petitioners : Mr.K.V.Dhanapalan  
For Respondents : Mr.N.Manokaran (R2 & R3)

Mr.M.Arunkumar  
for M/s.Sampath Kumar Associates (R1)

Mr.T.M.Pappiah,  
Special Government Pleader (R4)

W.P.No.17197 of 2018:

M.Murugan

.. Petitioner

Vs.

- 1.The Bank of Baroda,  
rep by its Chief Manager,  
Paramathi Road, Namakkal Town,  
Namakkal.
- 2.The Joint Sub Registrar-II,  
Namakkal Sub Registrar Office,  
Mohanur Road, Namakkal.
- 3.K.Maran
- 4.K.Ravikumar
- 5.R.Selvaraj
- 6.S.Ganesan
7. M/s.Muthumani Agro Farms,  
rep through its Managing Partner,  
M.Prakash  
15/35D3, 3<sup>rd</sup> Street, Thillaipuram,  
Namakkal.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of mandamus forbearing the 1<sup>st</sup> respondent from receiving any payment from the respondents 3 to 7 towards the petitioner's loan liabilities or to issue no due certificate to enable them to approach the 2<sup>nd</sup> respondent either for registering or releasing 5 disputed documents presented for registration on 21.07.2014 except following the provisions of the SARFAESI Act 2002 to proceed against secured assets under mortgage.

For Petitioners : Mr.N.Manokaran  
For Respondents : Mr.C.Jagadish (R3 to R7)

Mr.M.Arunkumar  
for M/s.Sampath Kumar Associates (R1)

Mr.T.M.Pappiah,  
Special Government Pleader (R2)

C O M M O N      O R D E R

M.DURAISWAMY, J.

Since the facts relating to the filing of the Writ Petitions are common, both the Writ Petitions are disposed of by this common order.

2.The Writ Petition in W.P.No.17197 of 2018 has been filed by one M.Murugan to issue a Writ of mandamus forbearing the 1<sup>st</sup> respondent from receiving any payment from the respondents 3 to 7 towards his loan liabilities or to issue No Due Certificate to enable them to approach the 2<sup>nd</sup> respondent either for registering or releasing 5 disputed documents presented for registration on 21.07.2014 except following the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to proceed against secured assets under mortgage.

3.The Writ Petition in W.P.No.19032 of 2018 has been filed by the petitioners, who are the respondents 3 to 7 in W.P.No.17197 of 2018 to issue a Writ of mandamus directing the 1<sup>st</sup> respondent Bank to receive the remaining claim amount as per comprise sanction dated 29.12.2017 and to issue NOC in their favour for registration of the pending Document Nos.53 to 57 of 2014 on the file of Sub Registrar Joint-II, Namakkal and to discharge the mortgage pertaining to the properties purchased by the petitioners herein.

4.It is the case of the petitioner in W.P.No.17197 of 2018 that he borrowed loan from the 1<sup>st</sup> respondent - Bank on 11.12.2008 and also executed Equitable Mortgage. Since the petitioner defaulted in repaying the loan amount, the loan accounts became Non Performing Asset.

5.According to the petitioner, he executed 5 Sale Deeds dated 21.07.2014 in favour of the respondents 3 to 7 (who are the petitioners in W.P.No.19302 of 2018). On the same day, the Sale Deeds were presented for registration before the 2<sup>nd</sup> respondent. However, by notice dated 10.09.2014, the 2<sup>nd</sup> respondent Joint Sub Registrar-II called upon the purchasers to settle the loan amount with the 1<sup>st</sup> respondent - Bank and produce the receipt as a proof of the same and also informed that the documents would be registered only after the production of the receipt issued by the 1<sup>st</sup> respondent - Bank.

6.The 1<sup>st</sup> respondent - Bank filed a suit in O.S.No.330 of 2014 on the file of the Additional District Court, Namakkal against the petitioner, the Joint Sub Registrar-II and 2 others

praying for the relief of permanent injunction restraining the petitioner from creating any encumbrance over the properties which are under mortgage with the 1<sup>st</sup> respondent - Bank. Thereafter, the suit was decreed. Therefore, the 2<sup>nd</sup> respondent had declined to register the Sale Deeds in favour of the respondents 3 to 7.

7.The 1<sup>st</sup> respondent - Bank had filed O.A.No.1078 of 2015 on the file of the Debts Recovery Tribunal, Madurai, against the petitioner and his wife for recovery of a sum of Rs.6,91,91,408/- and the same was decreed, against which the petitioner and his wife preferred an appeal in S.A.No.129 of 2016 on the file of the Debts Recovery Appellate Tribunal, Madurai. The Debts Recovery Appellate Tribunal, Madurai, passed a conditional interim order directing the petitioner to pay 3 payments of Rs.59 lakhs each to the 1<sup>st</sup> respondent - Bank. However, the petitioner did not comply with the conditional order.

8.Now, it is the contention of the petitioner that the respondents 3 to 7 have no right in the properties for the reason that the Sale Deeds dated 21.07.2014, which were presented for registration on the same day (i.e.) 21.07.2014 have not yet been registered.

9.The learned counsel appearing for the petitioner submitted that in view of Section 23 of the Registration Act, the documents should have been accepted for registration within a period of four months from the date of its execution. The learned counsel submitted that since the documents have not yet been registered by the 2<sup>nd</sup> respondent, the Joint Sub Registrar-II, the title in respect of the properties sold under the 5 Sale Deeds shall not get transferred to the respondents 3 to 7.

10.The learned counsel appearing for the respondents 3 to 7 submitted that as per Section 23 of the Registration Act, a document should be presented for registration within four months from the date of execution of the document.

11.On a perusal of Section 23 of the Registration Act, it is clear that no document shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution. In other words, if a document is not presented within four months from the date of execution, the same should not be accepted for registration by the Joint Sub Registrar. Therefore, Section 23 prescribes four months time for the presentation of a document for registration before the Joint Sub Registrar. No time limit has been fixed under the Registration Act for getting the document registered in the Office of the Joint Sub Registrar. Therefore, the contention raised by the learned counsel for the petitioner

cannot be accepted. Accordingly, we reject the said contention.

12. Having executed the Sale Deeds in favour of the respondents 3 to 7, now they cannot take an erroneous stand that the title of the properties was not passed on to them for the reason that the Sale Deeds have not yet been registered by the 2<sup>nd</sup> respondent.

13. It is pertinent to note that the petitioner has not filed any Civil Suit as against the respondents 3 to 7 challenging the Sale Deeds executed by him. Under Sections 92 & 93 of the Indian Evidence Act, the petitioner cannot set up a defence contrary to the recitals found in a document executed by him. When the petitioner had executed all the 5 Sale Deeds, he cannot now take a stand contrary to the recitals found therein. The 1<sup>st</sup> respondent - Bank had already initiated proceedings under the SARFAESI Act. Therefore, it is always open to them to realize the amount from the defaulting borrowers in accordance with the provisions of the SARFAESI Act.

14. The learned counsel appearing for the petitioners in W.P.No.19302 of 2018 sought for a direction to the 1<sup>st</sup> respondent - Bank to receive the remaining claim amount as per comprise sanction letter dated 29.12.2017 and to issue a No Objection Certificate in their favour for the registration of the pending Document Nos.53 to 57 of 2014 on the file of Sub Registrar Joint-II, Namakkal and to discharge the mortgage pertaining to the properties purchased by them.

15. It is pertinent to note that the compromise settlement letter dated 29.12.2017 was issued only to the vendor of the petitioners (who is the petitioner in W.P.No.17197 of 2018) and not to the petitioners in W.P.No.19302 of 2018. When the offer was made by the petitioner in W.P.No.17197 of 2018 and when the 1<sup>st</sup> respondent - Bank had approved the compromise proposal given by him by expressing their willingness to settle the matter for a sum of Rs.5.39 crores as against the notional dues of RS.7.26 crores in full and final settlement, the petitioners cannot rely upon that document and contend that they are willing to settle the amount offered by their vendor as full and final settlement. When the petitioner in W.P.No.17197 of 2018 is disputing the rights of the respondents 3 to 7, the respondents 3 to 7 cannot rely upon the letter dated 29.12.2017 and contend that they are willing to pay that amount to the 1<sup>st</sup> respondent - Bank.

16. It is also pertinent to note that the learned counsel appearing for the respondents 3 to 7 has not pointed out a single correspondence between the respondents 3 to 7 and the 1<sup>st</sup> respondent - Bank.

17.It is brought to the notice of this Court that the respondents 3 to 7 have not filed any application under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal, questioning the SARFAESI action taken against the properties.

18.The learned counsel appearing for the respondents 3 to 7 submitted that the respondents are prepared to pay the sum of Rs.5.39 crores to the 1<sup>st</sup> respondent - Bank.

19.Though the learned counsel for the respondents 3 to 7 submitted that so far the respondents have paid nearly Rs.8 crores to the 1<sup>st</sup> respondent - Bank, the learned counsel appearing for the 1<sup>st</sup> respondent - Bank submitted that they have paid only Rs.2.5 crores so far. Though the Sale Deeds were executed on 21.07.2014, the properties were brought to sale in the SARFAESI proceedings on 10.11.2016. When the respondents 3 to 7 have got the Sale Deeds executed in their favour on 21.07.2014, they should have challenged the auction notice before the Debts Recovery Tribunal. But for the reasons best known to them, they remained silent and remained as mute spectators. The respondents 3 to 7 have not given any representation to the 1<sup>st</sup> respondent - Bank till 05.07.2018. The respondents 3 to 7 have filed the Writ Petition in W.P.No.19302 of 2018 on 23.07.2018. Therefore, it is clear that just to maintain the Writ Petition, they have sent a representation to the 1<sup>st</sup> respondent - Bank on 05.07.2018.

20.That apart, the One Time Settlement approved by the 1<sup>st</sup> respondent - Bank based on the offer given by the petitioner viz., M.Murugan was also cancelled by the 1<sup>st</sup> respondent - Bank by their letter dated 04.07.2018. After the cancellation of the proposed OTS on 04.07.2018, the respondents 3 to 7 have filed the Writ Petition to direct the 1<sup>st</sup> respondent - Bank to receive the remaining amount as per the OTS dated 29.12.2017. None of the parties have challenged the cancellation of the OTS. Therefore, the same has become final.

21.With regard to the due execution of the Sale Deeds by the petitioner in favour of the respondents 3 to 7, since the said issue is a matter for evidence, the same cannot be decided under Article 226 of the Constitution of India.

22.So far as the loan transaction is concerned, the respondents 3 to 7 are strangers. The loan was obtained in the year 2008 whereas the respondents 3 to 7 have purchased the properties from the petitioner (borrower) in the year 2014. As already stated, the respondents 3 to 7 have not approached the 1<sup>st</sup> respondent - Bank till 05.07.2018 for settling the outstanding amounts. That apart, they have not challenged the SARFAESI proceedings under Section 17 of the SARFAESI Act before

the Debts Recovery Tribunal.

23.In these circumstances, the petitioners in both the Writ Petitions have not made out a case for the issuance of mandamus. It is always open to the 1<sup>st</sup> respondent - Bank to proceed against the defaulters and the guarantors for recovery of the amount due as per the provisions of the SARFAESI Act. It is also open to the 1<sup>st</sup> respondent - Bank to consider the representation dated 05.07.2018 given by the respondents 3 to 7 on merits and in accordance with law. The Writ Petitions are devoid of merits and the same are liable to be dismissed. Accordingly, the Writ Petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

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To

1.Bank of Baroda,  
Namakkal Branch,  
Paramathi Road,  
Namakkal.

2.The Joint Sub Registrar-II,  
Namakkal Sub Registrar Office,  
Mohanur Road, Namakkal.

+2 Ccs to Mr.T. Fennwalter Associates sr 61822.

+1 CC to Mr.S. Senthil Advocate sr 62354.

+2 Ccs to Mr.N. Manokaran, Advocate sr 61936.

+2 Ccs to Mr. Sampath Kumar, Advocate sr 62061,62060.

सत्यमेव जयते

W.P. Nos.19302 & 17197 of 2018 and

W.M.P.Nos.22709 & 20464 of 2018

VBA (CO)  
SP(10/09/2018)

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