BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.10.2018
CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA
and
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.(MD) No.19345 of 2018
and
W.M.P.(MD) No.17177 of 2018

R.Rakku ... Petitioner

Vs.

1.The Authorised Officer,
Indian Overseas Bank,
Aringar Anna Nagar,
Madurai.

2.The Branch Manager,
Indian Overseas Bank,
Kamarajar Salai Branch,
No.198, Kamarajar Salai,
Madurai - 9.

3.Nobal Rich
4.S.Vivekanandan
5.Nagarathinam ... Respondents

PRAYER: The writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondents 1 and 2 to receive the entire due loan amount with interest as on today in respect of the third respondent education loan dated 19.03.2013 for Rs.11,51,000/- from the petitioner and consequently directing the respondents 1 and 2 to handover title deed of the petitioner's husband house bearing No.44/64, Old Door No.104-B, 104-C, and New Door No.19, Street No.1A situated at East Car Street, Thirupuvanam Kottai, Thiruppuvanam Taluk, Sivagangai District.

For Petitioner : Mr.R.Murugappan

For Respondents 1 and 2 : Mr.N.Dilip Kumar

For Respondents 4 and 5 : Mr.R.Aravindan

ORDER
(Order of the Court was made by T.RAJA, J.)

This Writ Petitioner has once again come before us under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing the Authorised Officer, Indian Overseas Bank, first respondent herein and the Branch Manager, Indian Overseas Bank, Kamarajarsalai Branch, Madurai, second respondent herein to receive the entire loan amount with interest as on today in respect of the third respondent education loan dated 19.03.2013 for Rs.11,51,000/- from the petitioner and consequently direct the respondents 1 and 2 to handover title deed of the petitioner's husband house bearing No.44/64, Old Door No.104-B, 104-C, and New Door No.19, Street No.1A situated at East Car Street, Thirupuvanam Kottai, Thiruppuvanam Taluk, Sivagangai District.

2.Learned Counsel appearing for the petitioner submitted that the petitioner's husband one Late.T.Ramesh Kumar borrowed educational loan of Rs.11,51,000/- from the Branch Manager, Indian Overseas Bank, Kamarajar Salai Branch, Madurai, second respondent herein on 19.03.2013 showing him as guarantor for the third respondent's educational loan and also deposited the title deed with the second respondent. After some time, there was a default in the educational loan amount. Consequently, the respondents 1 and 2 initiated proceedings under SARFAESI Act issuing notice under Section 13(2) of the Act on 27.11.2015 followed by a notice under Section 13(4) of the Act on 30.06.2016. Aggrieved by the notice issued under Section 13(4) of the Act, the petitioner filed a Writ Petition (MD) No.12236 of 2016 on 05.07.2016 seeking a prayer to quash the impugned possession notice dated 30.06.2016 relating to her dwelling house bearing Door No.19 situated at East Car Street, Thiruppuvanam Kottai, Thiruppuvanam Taluk, Sivagangai District with consequent direction to consider her claim.

3.The Chief Manager / Authorised Officer of the respondent bank also filed a detailed counter in W.P.(MD)No.12236 of 2016 taking a clear stand that the deceased T.Ramesh Kumar was holding a savings bank account No.29516 since 2008 and also a current account No.947 since 05.06.2010 showing his mother Tmt.Nagarathinam as his nominee. The bank also averred in paragraph 6 of the counter that the writ petitioner had interpolated and introduced her status as the wife of the deceased T.Ramesh Kumar by way of a hand-written insertion in the said sale deed dated 07.12.2010. Mr.N.Dilip Kumar, learned Counsel appearing for the respondent bank stated that such corrections and insertions are not found in the original sale deed available with the bank. On this basis, the respondents 1 and 2 refuted the claim of the petitioner as the wife of T.Ramesh Kumar. Finally, this Court, by order dated 22.07.2016, although referred to the allegations made by the bank in respect of the interpolation and introduction made in the sale deed dated 07.12.2010 by the writ petitioner falsely claiming that she is the wife of the deceased

T.Ramesh Kumar by making some interpolation, has made an observation that the bank may consider the petitioner's request to pay the balance amount in accordance with the monthly installment.

4.Mr.N.Dilip Kumar, learned Counsel appearing for the respondents 1 and 2 submitted that when there was a liberty given in favour of the petitioner on 22.07.2016 to pay the money, the petitioner paid a sum of Rs.2,22,778/- only towards temporary overdraft on 13th August, 2016 and that account was closed. Though there was a direction by this Court to pay the outstanding loan amount of Rs.2.19 lakhs, the petitioner had paid a sum of Rs.2,22,778/- on 30.08.2016 towards temporary overdraft with accrued interest availed by the deceased T.Ramesh Kumar. Since he had also offered as a guarantor to the educational loan availed by his nephew and the said educational loan was not repaid, he has been brought within the description of the term “borrower” as defined in Suction 2(1) (f) of the Act. There was an overdue amount of nearly Rs.3.71 lakhs, it appears that the said amount was also paid on 17.10.2016 that is towards overdue of the educational loan amount but the subsequent installment has not been paid. Therefore, again the respondent bank initiated second proceedings issuing notice under Section 13(2) of the Act, on 03.03.2017 followed by the possession notice issued under Section 13(4) of the Act, on 16.11.2017.

5.The learned Counsel appearing for the petitioner submitted that the said notice was not issued to the petitioner. However, the petitioner approached the Debts Recovery Tribunal, Madurai, under Section 17 of the Act by filing S.A.No.10 of 2018 along with I.A.No.69 of 2018 praying for stay of all further proceedings pursuant to the possession notice dated 16.11.2017 affixed by the first respondent pending disposal of the proceedings before the Debts Recovery Tribunal, Madurai. The Debts Recovery Tribunal, Madurai, in an effort to give one more opportunity to the petitioner to show her bona fide in payment of outstanding loan dues to the respondent bank passed an order of interim stay till 28.03.2018 against the respondent bank subject to payment of Rs.2,06,000/- directly to the respondent bank on or before 26.02.2018 as first installment and another sum of Rs.2,06,000/- directly to the respondent bank on or before 27.03.2018, as second installment with a usual condition that in the event of failure to pay even a single installment as ordered above, the Ad-Interim Stay granted against the respondent bank till 28.03.2018 shall stand automatically vacated and the I.A.No.69 of 2018 shall stand dismissed and the matter was directed to be listed on 28.03.2018. As against this order, without complying with the same, the petitioner again rushed back to this Court with Writ Petition (MD)No.3575 of 2018 again questioning the very same possession notice issued under Section 13 (4) of the Act dated 16.11.2017 and also against the order passed by the Debts Recovery Tribunal, Madurai, dated 25.01.2018 as mentioned above, without even complying with the condition to pay the first installment of Rs.2,06,000/-. This Court by order dated 21.02.2018 after referring to the interpolation and also introduction made by the writ petitioner in the sale deed dated 07.12.2010 showing her as wife of the deceased T.Ramesh Kumar, doubting the relationship of the petitioner as the wife of the deceased T.Ramesh Kumar, made it clear that all these factual issues cannot be agitated in the Writ Petition because the petitioner has got effective and efficacious alternative remedy before the Debts Recovery Appellate Tribunal. Giving liberty to file an appeal before the Debts Recovery Appellate Tribunal, the Writ Petition was dismissed on 21.02.2018.

6.Again the petitioner came back to this Court with Review Application (MD)No.11 of 2018 and the same was also dismissed on 27.03.2018. When the matter stands as above, the petitioner once again cannot maintain a fresh writ petition seeking issuance of Writ of Mandamus directing the respondents 1 and 2 to receive the entire loan amount for the following reasons:

(a) When the petitioner was granted enough time for payment of Rs.2,06,000/- directly to the respondent bank as directed by the Debts Recovery Tribunal, Madurai, while entertaining the petitioner's I.A.No.69 of 2018 in S.A.No.10 of 2018 on 25.01.2018, it is not known why the petitioner has not complied with the said direction given to her to pay a sum of Rs.2,06,000/- directly to the respondent bank on or before 26.02.2018 as first installment and another sum of Rs.2,06,000/- directly to the respondent bank on or before 27.03.2018, as second installment and wrongly approached this Court challenging that order for no good reason filing W.P.(MD)No.3575 of 2018;

(b) This Court also taking note of the fact that the petitioner should have approached the Debts Recovery Appellate Tribunal as it is the effective and efficacious alternative remedy, dismissed the said Writ Petition on 21.02.2018;

(c) As we mentioned above, again the petitioner came to this Court with Rev. Application (MD) No.11 of 2018 and that was also dismissed on 27.03.2018;

(d) When the petitioner was given sufficient time by the Debts Recovery Tribunal, Madurai, while entertaining I.A.No.69 of 2018 in S.A.No.10 of 2018 on 25.01.2018, she had not complied with the condition. Her Writ Petition (MD) No.3575 of 2018 challenging both the notice issued under Section 13(4) of the SARFAESI Act, dated 16.11.2017 and the order passed by the Debts Recovery Tribunal, Madurai, dated 25.01.2018 was dismissed on 21.02.2018, giving liberty to the petitioner to file an appeal before the Debts Recovery Appellate Tribunal;

(e) The petitioner has not filed any appeal before the Debts Recovery Tribunal as against the order dated 25.01.2018 passed in I.A.No.69 of 2018 in S.A.No.10 of 2018, however, erroneously filed Review Application (MD) No.11 of 2018 before this Court and that was also dismissed on 27.03.2018 and therefore, the present Writ Petition is not only legally unsustainable, but also hit by the principles of res judicata; and

(f) Finally, the petitioner has come to this Court with unclean hands which is one of the disqualifications to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India to seek any remedy inasmuch as when the Writ Petition (MD)No.3575 of 2018 was dismissed as not maintainable with a liberty to file an appeal before the Debts Recovery Appellate Tribunal, even after the dismissal of the Review Application, the petitioner cannot maintain the Writ Petition. The petitioner has wrongly come to this Court. Now, the petitioner had to establish her status as wife of the deceased T.Ramesh Kumar by filing a civil suit which is the only remedy to establish her status as legally wedded wife of the deceased T.Ramesh Kumar. Without establishing the same, she cannot claim any right as wife of the deceased T.Ramesh Kumar.

7.For all these reasons, this Writ Petition is liable to be dismissed and accordingly, the same is dismissed. It is made clear that the respondent bank is at liberty to bring the property in question for auction to realise the debt amount in the manner known to law. No costs. Consequently, the connected Writ Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1.The Authorised Officer,
Indian Overseas Bank,
Aringar Anna Nagar,
Madurai.

2.The Branch Manager,
Indian Overseas Bank,
Kamarajar Salai Branch,
No.198, Kamarajar Salai,
Madurai - 9.

+1CC to Mr.R.Murugappan, Advocate, SR.No.91077
+1CC to Mr.N.Dilip Kumar, Advocate, SR.No.91331
+1CC to Mr.R.Aravindan, Advocate, SR.No. 91303

W.P.(MD) No.19345 of 2018 and
W.M.P.(MD) No.17177 of 2018
22.10.2018

SRM
ES/SKN/RSK/SAR 3/30.10.2018/5P/6C