

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.12908 of 2004

ORDER:

When the matter is taken up for hearing, none appeared for the petitioner inspite of the fact that the writ petition is listed under the caption "for dismissal".

The learned Standing Counsel appearing for respondents has submitted that the respondent-Corporation was taking steps to recover certain amounts from the petitioner as the petitioner stood as guarantor to the loan taken by another employee. When proceedings were issued to recover the amount, the present writ petition is filed and this Court granted interim directions on 26.11.2004 to the following effect :

"The petitioner claims that he was only a guarantor to the housing loan obtained by the third respondent and the third respondent is still in service and he is capable of paying the loan amount and without proceeding against the principal debtor-3rd respondent, the impugned proceedings have been issued by the first respondent.

The learned counsel for the respondents on instructions submits that another guarantor as well as the principal debtor are not in service. But, it is not disputed that the house against which the loan was taken was not mortgaged and R-1 is not able to recover the amount. I am of the opinion that the house must have been mortgaged. Unless the principal debtor is proceeded with and if the first respondent failed to recover any amount, even after proceeding against the principal debtor, then only the first respondent is entitled to recover the amount from the petitioner.

In the above circumstances, there shall be interim stay of the impugned proceedings as prayed for."

It is submitted by the learned Standing Counsel that in pursuance of the above interlocutory orders, respondents could not recover the amount either from the petitioner or from the principal borrower. He contend that liberty was given in the interlocutory order that if the respondents are not in a position to recover the amount from the principal borrower first, then, they can proceed against the guarantor i.e. the petitioner herein. The learned Standing Counsel contend that in view of the interim orders, no further orders are necessary in this writ petition.

This Court, having considered the aforesaid submission of the learned Standing Counsel, is of the considered view that in view of interim orders, no further orders are necessary in the writ petition and the same is accordingly closed. The respondent-Corporation is at liberty to proceed against the principal borrower or against the petitioner as the petitioner stood as guarantor.

Pending miscellaneous applications, if any, shall stand closed.

No order as to costs.

ABHINAND KUMAR SHAVILI, J

12th December 2018

ajr