

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.09.2021

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

Writ Petition No. 2289 of 2009

M/s Vamptex Traders
rep. by its Proprietor
Mr. A.Venkatachalam,
No. 277, Race Course
Coimbatore 641 018

.. Petitioner

Versus

M/s Industrial Development Bank of India Ltd.,
rep. by its Deputy General Manager,
Coimbatore Main Branch,
Stock Exchange Building, 683-686,
Trichy Road, Coimbatore 641 005.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Mandamus directing the respondent to pay a sum of Rs.3,66,010/- as the expenses incurred by the petitioner to safeguard the machinery and Rs.7,22,671/- towards the interest for the amount deposited by the petitioner to the respondent.

For Petitioner : Mr. C. Prabakaran
For respondent : Mr. K. Moorthy

ORDER

This writ petition has been filed seeking to issue a Writ of Mandamus directing the respondent to pay a sum of Rs.3,66,010/- towards the expenses

incurred by the petitioner to safeguard the machinery and Rs.7,22,671/- towards interest for the amount deposited by him with the respondent.

2. The petitioner is a leading textile machinery dealer in South India. During the course of their business, they have seen an advertisement in newspapers dated 26.01.2006, 15.02.2006 and 05.05.2007 made by the respondent, for selling the machinery of M/s Sri Vigneshwara Cotton Mills Ltd., Karaikudi, under SARFAESI Act. The petitioner approached the respondent and entered into a one time settlement over private treaty for purchasing the machineries for a sum of Rs.135 lakhs and paid a sum of Rs.70 Lakhs as part payment towards consideration. M/s Sri Vigneshwara Cotton Mills Ltd have also given their undertaking on 02.05.2006 to settle their dues of Rs.135 Lakhs in favour of the respondent and accepted to deliver the machinery, which was hypothecated to the respondent bank. Further, as per the request of the respondent, the petitioner has arranged a security service to safeguard the machinery lying at M/s Vigneshwara Cotton Mills Ltd and the respondent had agreed to compensate the cost incurred by the petitioner towards securing and maintaining the machines. However, the possession of the machineries could not be delivered to the petitioner due to the resistance of the Labour Union of the said mill. Subsequently, the petitioner came to know that an Official Liquidator

was appointed by this Court who had taken possession of the machineries on 17.07.2007. In such circumstances, the respondent agreed to refund the sum of Rs.70 Lakhs paid by the petitioner towards consideration. However, the respondent paid only Rs.25,000/- towards security charges, despite several requests made by the petitioner. The respondent has not paid the amounts towards interest at 15% for the money deposited with the respondent and also other expenses incurred by them such as legal expenses, travelling expenses and security charges. In such circumstances, the petitioner is before this Court with this writ petition.

3. Earlier, when this writ petition was taken up for hearing by this Court, this Court, after hearing both sides, refused to grant the relief sought for in this writ petition and dismissed it on 16.08.2011. The order dated 16.08.2011 reads as follows:-

" 4. The correspondence file in the typed set shows that the money advanced by the petitioner was refunded including interest on the deposit made by them. In the communication dated 03.01.2008, the bank informed the petitioner that on their deposit on 10.11.2007, most of the machineries were removed and the criminal complaint was also filed. Therefore, the petitioner's appointing ASF had not achieved the purpose for which the security guards were appointed and rather it had defeated the very purpose.

5. In the present case, the agreement entered between the petitioner and the respondent is not enclosed and there is a serious dispute regarding creditworthiness of the security

agency employed by the petitioner. Even assuming that there is an existence of a contract between the parties, such a contractual term cannot be enforced in a Writ Petition under Article 226 of the Constitution. Therefore, the contention raised by the petitioner cannot be accepted. The respondent also raised serious doubts regarding the conduct of the agency. In the light of the above, there is no case made out. Hence, the writ petition stands dismissed. No costs."

4. Subsequently, at the instance of the petitioner, this Court recalled the order dated 16.08.2011 on 13.03.2015 in M.P.No.1 of 2014 in W.P.No.2289 of 2009.

5. The learned counsel appearing for the petitioner submitted that the respondent has to pay the amount with interest at the rate of 15% and not at the rate of 7.5% which is contrary to the terms and contract between the parties.

6. The learned counsel appearing for the respondent stoutly refuted the claim made by the petitioner. He relied upon the letters dated 24.12.2007, 31.12.2007 and 03.01.2008 and submitted that the respondent is not liable to pay any amount to the petitioner. It is further submitted that they have already paid the amount of Rs.70 lakhs with interest at the rate of 7.5% on 24.12.2007 and the question of paying such sum with 15% interest per annum does not arise. Further, there is no documentary evidence provided by the petitioner to

show the expenses incurred by them for arranging the security service. In any event, when the respondent refunded the sum of Rs.70 lakhs, the relief sought for in this writ petition need not be granted. The learned counsel for the respondent therefore prayed for dismissal of the writ petition.

7. Heard the counsel for both sides and perused the materials placed on record. Admittedly, the respondent refunded the sum of Rs.70 lakhs paid by the petitioner on 24.12.2007 with interest at the rate of 7.5% per annum. The demand of the petitioner for repayment of such sum with interest at the rate of 15% per annum is refuted by the respondent. It is seen that the petitioner accepted the amount of Rs.70 lakhs with interest at the rate of 7.5% per annum without any protest or objection. After having received the amount on 24.12.2007, the this writ petition was filed on 30.01.2009, nearly after a year, demanding differential amount towards interest. The petitioner has not produced any evidence to show that they are entitled to interest at the rate of 15% per annum. There is no contract between the petitioner and the respondent to repay the amount with 15% per annum. In fact, in the letter dated 24.12.2007, acknowledging the sum of Rs.70 lakhs paid by the respondent, it was stated by the petitioner that "*we also confirm that we shall withdraw all the pending writ appeal filed by us against IDBI and SVCN Limited. We have no*

charges on the hypothecated machine of IDBI with SVCM Limited." Further, for having provided security services to the machineries, the petitioner has not raised any bill or provided any documentary evidence thereof. The respondent also disputed the claim of the petitioner for payment of charges towards security related services. When there is a dispute with respect to payment, this Court cannot direct the respondent to pay any amount to the petitioner in exercise of power under Article 226 of The Constitution of India. It is open to the petitioner to seek appropriate remedy in the manner known to law, if they are so advised.

8. In the result, the petitioner is not entitled for any relief as prayed for in this writ petition. The writ petition stands dismissed. No costs.

15.09.2021

Index: Yes / No

Internet: Yes / No

Speaking / non Speaking order

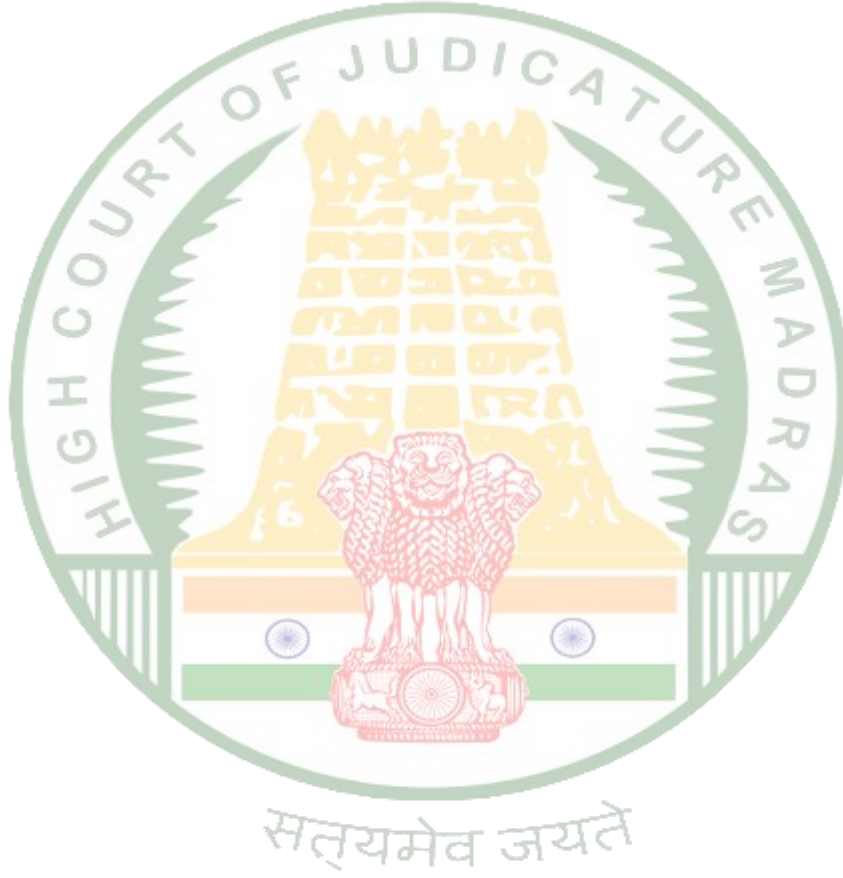
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To

The Deputy General Manager,
M/s Industrial Development Bank of India Ltd.,

<http://www.judis.nic.in>

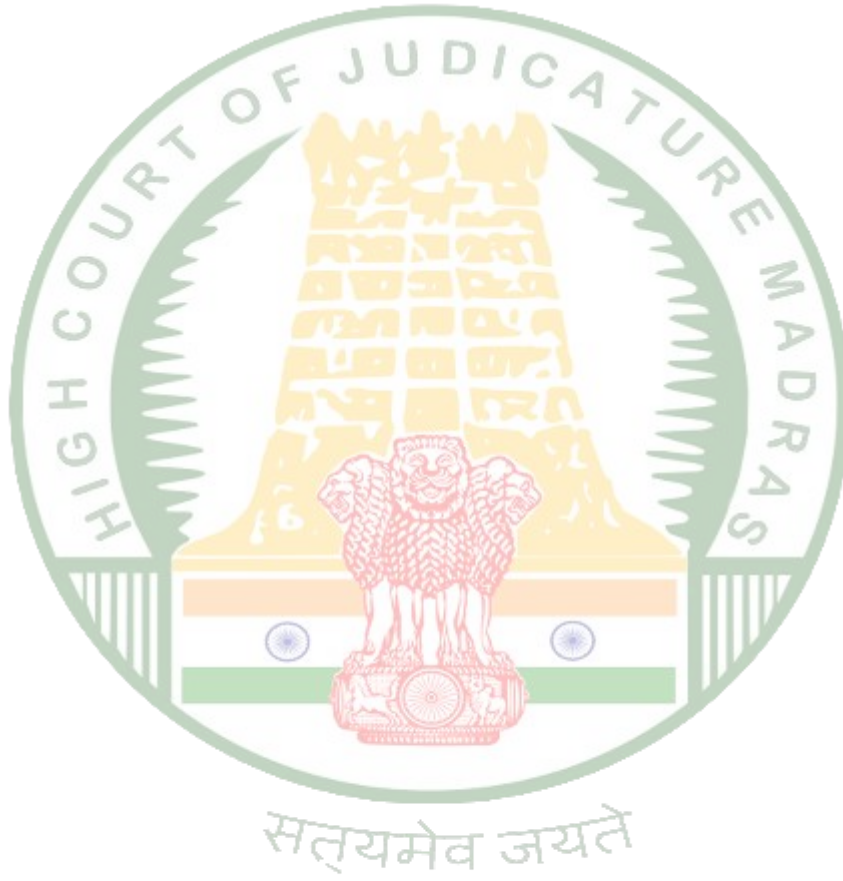
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R. MAHADEVAN, J

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