

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2019

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THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P. No.12031 of 2019

and

W.M.P. Nos. 12302 & 19661 of 2019

BCIL Reality Pvt. Ltd.,
37-1-1, Aga Abbas Ali Road,
Bengaluru - 560 004.
Represented by its Director,
Mr.Sanjay Ramanujam

... Petitioner

Vs.

1. The Sub-Registrar,
Registrar of Assurances,
Selaiyur, Chennai - 600 051.
2. M/s.Vistra ITCL (India) Ltd.,
Formerly known as IL & FS Trust Co. Ltd,
The IL & FS Financial Centre,
Plot C-22, G-Block, 7th Floor,
Bandrakurla Complex, Bandra (East),
Mumbai - 400 051.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, to declare that the Rectification Discharge Receipt dated 09.01.2018 as executed by the Second Respondent and registered as Document No.153 of 2018 by the First Respondent in Book-I on the file of the Registrar of Assurances, Selaiyur, Chennai as invalid, null, non-est and void and award costs to the Petitioner.

For Petitioner : Ms. Shubharanjani Ananth

For Respondents : Mr. T.M. Pappiah for R1
Special Government Pleader

Mr. V. Makesh Kumar for R2

O R D E R

Heard Ms. Shubharanjani Ananth, Learned Counsel for the Petitioner, Mr. T.M. Pappiah, Learned Special Government Pleader

appearing for the First Respondent and Mr. V. Makesh Kumar, Learned Counsel appearing for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition has been filed to declare that the rectification discharge receipt dated 09.01.2018 executed by the Second Respondent and registered as Document No. 153 of 2018 by the First Respondent in Book I on the file of the Registrar of Assurances, Selaiyur, Chennai as invalid, null, non-est and void and award costs to the Petitioner.

3. Having regard to the aforesaid relief sought, it would be necessary to refer to Section 31 of the Specific Relief Act, 1963, which reads as follows:-

"31. When cancellation may be ordered:-

(1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation."

The said statutory provision in no uncertain terms enables the Petitioner to institute suit before the jurisdictional Civil Court for the relief that has been sought in this Writ Petition.

4. There is no explanation from the Petitioner in the affidavit filed in support of the Writ Petition for not having resorted to that efficacious remedy. In this backdrop, it may be recapitulated here that the Hon'ble Supreme Court of India in CCE -vs- Dunlop India Limited [(1985) 1 SCC 260], has succinctly explained the legal position relating to the exercise of discretionary powers under writ jurisdiction, as follows:-

"3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations as for instance where the very vires of the statute is in question or

where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

5. That apart, the nature of disputes sought to be agitated by the Petitioner in the Writ Petition involve various disputed question of facts which require recording of evidence of the parties on their respective claims, which are absolutely private in character and does not have any element of public law involved, which could be decided in summary proceedings under Article 226 of the Constitution.

6. In this regard, reference may be made to the decision of the Division Bench of this Court in P. Rukmani -vs- Amudhavalli (Judgment dated 17.07.2019 in W.A. No. 229 of 2018), in which the question whether Writ Petition under Article 226 of the Constitution challenging the validity of the registration of documents made under the Registration Act, 1908, could be entertained came up for consideration, and it has been held as follows:-

"9. Considering the submissions made at the bar, we are of the clear opinion that in a case relating to execution of a conveyance deed or a sale deed or cancellation thereof, if there is any dispute about the rights of the parties involved therein, the only appropriate remedy for the parties is to approach the Civil Court by way of civil suit. The act of registration of a document is a consequential act which will be subject to decree of Civil Court in case such a dispute arises.

10. We are of the clear opinion that such a relief could not have been sought or granted in Writ Jurisdiction under Article 226 of the Constitution of India. The civil rights of the parties based on relevant evidence can only be determined by a Civil Court by a competent Civil Court and not by the writ Court under Article 226 of the Constitution of India.

Such private rights of the parties cannot be made a subject matter of writ jurisdiction. The writ petitions under Article 226 of the Constitution of India lie only against the State or instrumentality of the State as defined under Article 12 of the Constitution of India. Therefore, such determination of private civil rights of the parties cannot be made subject matter of writ petition."

7. In the upshot, the Writ Petition, which cannot be admitted, is dismissed. It is made clear that no view has been expressed by this Court on the correctness or entitlement on the merits of the claim made by the Petitioner. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

dna

To

The Sub-Registrar,
Registrar of Assurances,
Selaipur, Chennai - 600 051.

+1 cc to M/s.Shubhranjani, Advocate, S.R.No.66838

+1 cc to M/s.Rohini Ravikumar, Advocate, S.R.No.67195

+1 cc to the Government Pleader, S.R.No.67122

VBA(CO)
SSM(08/11/2019).

W.P. No.12031 of 2019

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