IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

C.R.P.(PD)No.3063 of 2019

D.Gopi ... Petitioner

Vs.

N.B.RameshBabu ... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India praying to issue a direction to the learned Principal District Judge, Thiruvallur to number the plaint in Unnumbered OS.SR.No.769 of 2017 filing dated 01.02.2017.

For Petitioners : Mr.P.Krishnan

ORDER

This revision petition has been filed seeking for a direction to the Court below i.e., the Principal District Judge, Thiruvallur to number the plaint in unnumbered O.S.SR.No.769 of 2017 filed on 01.02.2017 and proceed in accordance with law.

2.The said unnumbered suit was filed by the revision petitioner/ plaintiff before the Court below for specific performance pursuant to the sale agreement between the plaintiff and the defendant in respect of the suit property.

3.When the plaint was presented, the Court below raised an issue of maintainability of the suit as the property in question had already been mortgaged with a Bank, pursuant to which, the SARFAESI proceedings had been issued by issuing notice under Section 13(2) of the SARFAESI Act and therefore, when there is a specific condition in clause (8) of the notice, that the mortgaged property shall not be transferred by sale, lease or otherwise, without obtaining written consent of the secured creditor (Bank), how the plaintiff seek prayer of specific performance against the defendant to execute the sale in respect of the suit property to and in favour of the revision petitioner/plaintiff.

4.Thereafter, several times the matter had been represented and every time, it has been returned directing the petitioner/plaintiff to comply with the earlier directions. At one point of time, it was the plea on the part of the revision petitioner/plaintiff that, the very loan secured by the defendant in the suit, who was the borrower from a Nationalised Bank viz., State Bank of India, himself had settled the loan and therefore, as on the date of filing of the suit, there had been no charge over the property much less the charge from the said Bank. Therefore, there can be no impediment for the Court below to entertain the suit by numbering it and proceed in accordance with law.

5.In that context, it seems that, the said suit was posted for argument for maintainability on 18.07.2018, all these details had been given, according to the learned counsel for the revision petitioner and the matter was argued for maintainability and pursuant to which, it seems that, the Court below posted the matter on 30.07.2018 for passing orders on maintainability.

6.In this context, the learned counsel appearing for the revision petitioner would submit that, thereafter also, the Court below, instead of passing orders on maintainability and also instead of accepting the maintainability and numbering the suit, had been going on adjourning the matter under various caption like, Order, For clarification etc.

Lastly on 19.02.2019, the case paper i.e., the plaint unnumbered has once again been returned with a direction that, previous directions are not yet complied. Thereby there was no definite finding given by the Court below on the issue of maintainability, for which, arguments were advanced.

7.Only in that circumstances, the present revision has been filed by the plaintiff with aforesaid prayer.

8.I have heard Mr.P.Krishnan, learned counsel appearing for the petitioner and also have gone through the materials placed before this Court.

9.When this revision came up for hearing for admission on 18.09.2019, after hearing the learned counsel for the petitioner on that issue, that the loan obtained from the Nationalised Bank viz., State Bank of India has already been settled or discharged as early as in the year 2012, this Court passed the following order on 18.09.2019:

> *"Learned counsel appearing for the petitioner submits that, on 17.09.2019 the petitioner has sent a letter to the Authorized Officer, State Bank of India, Stressed Assets Resolution Centre, Egmore, Chennai -*

600 008, with regard to certain particulars as to whether the loan amount has been settled or not.

2. Learned counsel would submit that, since the letter has been sent yesterday, it takes some reasonable time to get reply, as soon as reply is received, the same would be placed before this Court to proceed further in this matter. Recording the same, post the matter after two weeks."

10.Pursuant to which, today when the case is taken up for hearing, Mr.R.Krishnan, learned counsel for the petitioner has produced a letter issued by State Bank of India Stressed Assets Resolution Centre, by letter dated 3rd October, 2019 which reads thus:

"Shri D Gopi
S/o Deenadayalan
NO:34/1 Gajapathy Street
Shenoy Nagar
Chennai - 600 030
Dear Sir,

LOAN ACCOUNT 10403029519 -

We refer to your letter dated 20.09.2019, and have to advise that the captioned loan availed by Shri N.B. Ramesh Babu (A/c No: 104030295190 has been duly discharged by him on 18.07.2012. This letter is issued by the undersigned without any financial obligation on the part of the Bank/officials of the bank.
Yours faithfully

Authorised Officer"

11.On reading the said content of the letter issued by the State Bank of India, it become clear that, the defendant having obtained the loan from State Bank of India by mortgaging the suit schedule property, since has discharged the said loan in full as early as on 18.07.2012, the Bank has given the said letter that, there has been no lien with the said Bank viz., State Bank of India with regard to the said property as the loan was fully discharged.

12.This letter would be a complete answer to the query raised by the trial Court before numbering the suit. Since the very alleged mortgage has already been retrieved, in view of the full discharge of the loan amount by the defendant on 18.07.2012 itself, there could be no impediment for the Court below to entertain the suit without insisting upon any maintainability on the ground of alleged first charge over the suit property by the Bank concerned who sanctioned the loan originally to the defendant.

13.In that view of the matter, this Court feels that, now the doubts have been cleared on the part of the plaintiff/revision petitioner, with the strength of the said factual matrix, which is supported by the letter now has been given by the Stressed Assets Resolution Centre of the Bank concerned about the full discharge of the loan amount as early as on 18.07.2012 by the defendant. Hence the Court below can very well entertain the suit and number it, if it is otherwise in order.

14.In the result, this revision is disposed of, with a direction:

> That the Court below i.e., the Principal District Judge, Tiruvallur is hereby directed to number the suit in O.S.SR.769 of 2017 dated 01.02.2017 if it is otherwise in order and proceed with the same in accordance with law.

15.With this direction, this Civil Revision Petition is disposed of accordingly. No costs.

16.The Registry is directed to return the original plaint filed by the revision petitioner along with this revision to the learned counsel appearing for the revision petitioner after due acknowledgment.

24.10.2019

Sgl

R.SURESH KUMAR, J.

Sgl

To

The Principal District Court,
Thiruvallur.

C.R.P.(PD).No.3063 of 2019

24.10.2019