

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2019

CORAM :

The Hon'ble Mrs.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE M.DURAI SWAMY

W.P. No.31654 of 2018
and W.M.P.No.36895 of 2018

M/s.D.R.Logistics (P) Limited,
Rep. by its Managing Director, R.Devadoss. .. Petitioner

-vs-

1.Pridhvi Asset Reconstruction and
Securitization Company Ltd.,
D.No.8-2-622/5/A/3, 3rd Floor,
Indira Chambers, Road No.10,
Banjara Hills, Hyderabad-500 034.

2.The Recovery Officer,
Debts Recovery Tribunal-III, Chennai,
5th Floor, Dewa Towers, 770 A,
Anna Salai, Chennai 600 002.

3.Commissioner of Customs,
Office of the Commissioner of Customs,
Chennai Port-Imports, Custom House,
No.60, Rajaji Salai, Chennai-1.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus to forbear the 1st respondent from interfering with the petitioner's right as a "Custodian" to use the property in 144, Vallur Village, Minjur Panchayat Union, Ponneri Taluk, Thiruvallur District, comprised in Survey No.731/2, 740/4, 742, 730/1, 731/1, 732/5, 727, 741/1, 741/2, 728, 729/1, 730/2, 740/1, 740/2, 740/3, 740/5, 729/2 and 743 notified as customs area under Section 8(b) and 45(i) of the Customs Act, pursuant to public notice No.49 of 2007 and No.48 of 2007 dated 02.04.2007 passed by the 3rd respondent.

For Petitioner : Mr.V.Selvaraj, Sr. Counsel
for Mr.Antony Selvam

For Respondents : Mr.Srinath Sridevan for R-1
: R-3 No appearance

O R D E R

(Order of the Court was made by The Hon'ble Chief Justice)

The prayer of the petitioner is that the first respondent, i.e., Pridhvi Asset Reconstruction and Securitization Company Ltd., may be prevented from interfering with the petitioner's right as custodian to use the property in 144, Vallur Village, Minjur Panchayat Union, Ponneri Taluk, Thiruvallur District, comprised in Survey No.731/2, 740/4, 742, 730/1, 731/1, 732/5, 727, 741/1, 741/2, 728, 729/1, 730/2, 740/1, 740/2, 740/3, 740/5, 729/2 and 743.

2.It is an admitted fact that the petitioner company had availed a loan from Bank of India, Chennai Main Branch. Several properties were offered as security for the loan availed from Bank of India. The property mortgaged includes 9.67 acres comprised in Survey No.731/2, 740/4, 742, 730/1, 731/1, 732/5, 727, 741/1, 741/2, 728, 729/1, 730/2, 740/1, 740/2, 740/3, 740/5, 729/2 and 743 situated at Vallur Village, Minjur Panchayat Union, Ponneri Taluk, Thiruvallur District. The Bank of India, thereafter, assigned its rights in favour of respondent no.1, Pridhvi Asset Reconstruction and Securitization Company Ltd.. Thereafter, on an application by the first respondent in I.A.No.322 of 2018 in D.R.C.No.137 of 2013 in O.A.No.21 of 2012, an order dated 06.09.2018 came to be passed by the Recovery Officer, Debts Recovery Tribunal-III, Chennai, for taking possession of the properties in favour of the first respondent. Item 1 to the schedule of properties mentioned in the order dated 06.09.2018 covers all the 18 survey numbers mentioned in the writ petition. Admittedly, the petitioner has not challenged the order dated 06.09.2018 passed by the Recovery Officer in I.A.No.322 of 2018 so far. Without challenging the order passed by the Recovery Officer before the Presiding Officer, the petitioner has filed the above writ petition for the issuance of writ of mandamus. Unless the order dated 06.09.2018 is set aside, the petitioner cannot seek for mandamus in this writ petition.

3.As stated earlier, the prayer of the petitioner is that the first respondent be directed not to interfere with the petitioner's right as of custodian to use the above mentioned properties. The learned counsel for respondent no.1 pointed out that in relation to the very same properties, the petitioner had filed Original Side Appeal No.272 of 2015 before this Court. The said Appeal came to be dismissed with costs of Rs.20,000/-

to be paid in favour of the first respondent (the judgment is reported in 2016 SCC Online Mad 52). This fact has been suppressed by the petitioner in the present petition. There is no mention at all in the present petition to the O.S.A. being filed by the petitioner and the fact that it came to be dismissed with costs. This is a clear suppression of facts on the part of the petitioner. In fact, in the affidavit filed in support of the petition, the petitioner has categorically stated that he has not filed any similar petition before this Court or any other Court.

4.A litigant, who approaches the Court, is bound to state all the relevant facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as the opposite party, which cannot be countenanced.

5.The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. Land-grabbers, tax-evaders, bank loan dodgers and other unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

6.The truth should be the guiding star in the entire judicial process. Every trial is a voyage of discovery in which truth is the quest. It is one of those fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings. The judicial process cannot become an instrument of oppression or abuse, or a means in the process of the Court to subvert justice, for the reason that the Court exercises its jurisdiction only in furtherance of justice. A petition or an affidavit containing a misleading and/or an inaccurate statement or in which material facts are suppressed, only to achieve an ulterior purpose, amounts to an abuse of process of the Court.

7. A person who seeks equity must come with clean hands. He, who comes to the Court with false claims or who suppresses material facts, cannot plead equity nor would the Court be justified to exercise jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in a case based on false claims or when relief is sought to be obtained by practicing fraud. No sympathy and equitable consideration can come to the rescue of such petitioner.

8. In *G. Narayanaswamy Reddy and others v. Governor of Karnataka and another*, reported in (1991) 3 SCC 261 : AIR 1991 SC 1726, the Supreme Court denied relief to the appellant who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11-A of the Land Acquisition Act because of the stay order passed by the High Court. While dismissing the special leave petition, the Court observed:

"Curiously enough, there is no reference in the Special Leave Petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the Special Leave Petitions are liable to be rejected."

9. In *Prestige Lights Ltd. V. State Bank of India*, reported in (2007) 8 SCC 449, the Supreme Court held that in exercising power under Article 226 of the Constitution of India the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Courts jurisdiction under Article 226 of the Constitution is duty bound to place all the facts before the court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain petition filed under Article 226 of the Constitution. This Court referred to the judgment of Scrutton, L.J. in *R v Kensington Income Tax Commissioners* (1917) 1 K.B. 486, and observed:

"In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, then the Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."

10. In *K.D. Sharma v. Steel Authority of India Ltd. and others*, reported in (2008) 12 SCC 481, the Supreme Court held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the Writ Court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. The same rule was reiterated in *G. Jayshree and others v. Bhagwandas S. Patel and others* (2009) 3 SCC 141.

11. In *Udyami Evam Khadi Gramodyog Welfare Sanstha and another v. State of Uttar Pradesh and another*, reported in (2008) 1 SCC 560, the Supreme Court held that a writ remedy is an equitable one. A person approaching a superior Court must come with a pair of clean hands. It should not suppress any material fact.

12. In *Dalip Singh v. State of U.P. and others*, reported in (2010) 2 SCC 114, the Supreme Court noticed an altogether new creed of litigants, that is, dishonest litigants and went on to strongly deprecate their conduct by observing that, the truth constitutes an integral part of the justice delivery system. The quest for personal gain has become so intense that those involved in litigation do not hesitate to seek shelter of falsehood, misrepresentation and suppression of facts in the course of Court proceedings. A litigant who attempts to pollute the stream of justice, or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

13. The decision in the case of *Dalip Singh v. State of U.P. and others*, supra, has been relied upon by the Supreme Court in the case of *V.Chandrasekaran and another v. The Administrative Officer and others*, reported in (2012) 12 SCC 133. In *V.Chandrasekaran and another v. The Administrative Officer and others*, supra, the Supreme Court observed that the appellants did neither approach the statutory authority nor the Court with clean hands and therefore, they do not warrant any relief.

14. Similar view has been taken by the Supreme Court in the decision in *Kishore Samrite v. State of U.P. and others*, reported in (2013) 2 SCC 398, in which, it was held that no relief can be granted to a litigant, who has not come with clean hands before the Court and in fact, an unfair litigant needs to be deprived of any relief.

15.A writ remedy is an equitable one. A person approaching a superior Court must come with a pair of clean hands. It should state all relevant facts and not suppress any material fact. In the present case, the petitioner has not disclosed that he had filed Original Side Appeal No.272 of 2015 before this Court and the said Appeal came to be dismissed with costs of Rs.20,000/-. In fact, in the affidavit filed by the petitioner in support of his writ petition, he has categorically stated that he has not filed any similar petition before this Court or any other Court. This is a totally false statement to the knowledge of the petitioner. When a person approaches a Court of equity in exercise of its extraordinary jurisdiction under Articles 226/227 of the Constitution, he should approach the Court with clean hands.

16.In view of the above, we are of the considered opinion that the petitioner did not approach the Court with disclosure of true facts. Thus, the petitioner has not approached the Court with clean hands. Hence, he is not entitled to the relief sought for. Hence, the writ petition is dismissed. No costs. Consequently, W.M.P.No.36895 of 2018 is also dismissed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

sra

To

1.The Recovery Officer,
Debts Recovery Tribunal-III, Chennai,
5th Floor, Dewa Towers, 770 A,
Anna Salai, Chennai 600 002.

3.Commissioner of Customs,
Office of the Commissioner of Customs,
Chennai Port-Imports, Custom House,
No.60, Rajaji Salai, Chennai-1.

+1cc to Mr.Srinath Sirdevan, Advocate, S.R.No. 948
+1cc to the Government Pleader, S.R.No. 1180

W.P.No.31654 of 2018

MG(CO)
GN(23/01/2019)