



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.10.2019**

CORAM:

THE HONOURABLE **MR. JUSTICE M. SUNDAR**

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W.P (MD)No.10431 of 2019

K.Siva

... Petitioner

/Vs./

Chief Manager,
State Bank of India (SME),
Nagercoil Branch,
14 - B, Disillery Road,
Nagercoil & Post,
Kanyakumari District,
Pin: 629001.

... Respondent

PRAYER: Writ Petition - filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to release the original sale deeds vide 1.Document No.2768/2008 dated on 20.03.2008 of Malapalayam Sub Registrar Office, 2.Original general power of attorney document No.604/2007 dated 16.04.2007 of Malapalayam Sub Registrar Office, 3.Original general power of attorney document no.566/2007 dated 09.04.2007 of Malapalayam Sub Registrar Office, 4. Original general power of attorney document no.1183/2007 dated 18.04.2007 of Malapalayam Sub Registrar Office, 5. Original sale deed no. 3542/2004 of Eadalakudi Sub Registrar Office dated on 15/12/2004 standing in the name of guarantor Rajappa.P, 6. Original partition deed no.240/1982 of Eadalakudi Sub Registrar Office dated on 10.02.1982 standing in the name of Guarantor P.Muthusamy Nadar and 7.Original Sale deed No.1833/1977 of Rajakkamangalam Sub Registrar Office dated on 17.11.1977 stands in the name of Guarantor Ganga bai Pursuant to the loak adalath settlement dated 25.11.2016 on the file of the Debt Recovery Tribunal in Loak Adalath settlement Number Drt/MDU/Loak-31/2016 in O.A.No.109 of 2016 and on the basis of the closure report of the respondent dated 23.03.2017 and consequently directing the respondents to execute cancellation of Memorandum of Deposit of Title Deeds within a fixed time frame stipulated by this Court.

For Petitioner : Mr.T.Arul
For Respondent : Mr.V.P.Rajan
Standing Counsel

ORDER

Mr.T.Arul, learned counsel on record for writ petitioner and Mr.V.P.Rajan, learned counsel for sole respondent are before this
<https://hcservices.ecourts.gov.in/hcservices/>



Court.

2. Sole respondent has filed counter affidavit together with typed set of papers.

3. With consent of learned counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

4. Considering the scope of instant writ petition, short facts shorn of unnecessary details will suffice. Suffice to say that writ petitioner had availed loan and other financial facilities from the respondent Bank. Account of the writ petitioner with respondent Bank became irregular resulting in respondent Bank approaching 'Debts Recovery Tribunal at Madurai' (hereinafter referred to as 'said DRT' for the sake of brevity) vide O.A.No.309 of 2014. This proceedings before said DRT initiated by respondent Bank ultimately culminated in a settlement before jurisdictional Lok Adalat on 25.11.2016. This was followed by a closure report dated 28.03.2017 issued by the respondent Bank. As the settlement memo before the jurisdictional Lok Adalat dated 25.11.2016 and the closure report of the respondent Bank dated 28.03.2017 are of significance, this Court deems it appropriate to scan and reproduce the same.

Lok Adalat
(As per Chapter VI Legal Services Authorities Act, 1987)
Organized by District Legal Services Authority, Madurai
(For Debts Recovery Tribunal, Madurai)

SETTLEMENT MEMO

Type of case: Pending
Category of Case: O.A.
Case No. O.A No. 309/2014

Pleading (Words of the Court): DEBTS RECOVERY TRIBUNAL AT MADURAI

State Bank of India,
Nagercoil Branch,
14-B, Distillery Road,
Nagercoil,
Kanyakumari District.

Versus

1. Mrs. K.L. S. Motore
Rep. by its partner Mr. Siva,
137, Beach Road,
Kottar, Near Hindu College,
Nagercoil.
2. Mrs. K. Sujatha
W/o. Siva,
No. 329, Simon Nagar,
Kottar Post, Nagercoil.
3. Mr. P. Rajappa,
S/o. Pennusamy,
13/86, Perikunukudieruppi,
Thangam Palur Village,
Agastheswaram Taluk,
Kanyakumari District.
4. Mr. Muthusamy
S/o. Padmanathan,
Othapali, Swaminathapuram,
Vengalothapuram,
Kanyakumari Post,
Kanyakumari District.
5. Mrs. Gangabai
W/o. Thangappa Nader,
Keezha Mavilai,
Kanyakumari District.

Defendants/Respondents



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GA No. 157

BEFORE IT PLEASE YOUR HONOUR

Debate in brief:
The Original Application filed by the applicant for recovery of dues (as mentioned above) together with interest at the rate, from the date of filing application till the date of payment from defendant(s)/Respondent and grant of Recovery Certificate.

Set Amount: Rs. 1,38,35,000/-

We, that is Mr. B. Ravi Ram, Chief Manager, Nagarcoll for Applicant Bank and Mr. M. Siva, D-1 present and represented for other defendant also in the above said case have arrived at the compromise to settle the matter as follows:

TERMS OF SETTLEMENT:

Both the parties have agreed to settle the claim for a sum of Re. 80,00,000/- (Rupees Forteen Lakhs only) in full quit in the following conditions:-

- The first installment of Rs.10,00,000/- (Rupees Ten Lakh Only) paid by Account Transfer today i.e. 25.11.2016.
- The Second installment of Rs.40,00,000/- (Rupees Forty Lakh Only) to be paid on or before i.e. 30.12.2016.
- Balance amount of Rs.30,00,000/- (Rupees Thirty Lakhs only) to be paid on or before 28.03.2017.

After completion of last installment of agreed amount, the Applicant Bank has agreed to release all the documents within a period of one month.

That if the defendant(s) commits default to pay full or any one instalment stated in aforesaid conditions, the defendant(s) [borrower(s)/guarantor(s)] jointly severally be liable to pay to the Applicant Bank (Plaintiff) the entire amount due along with applicable interest as mentioned in Original Application less the amount already paid by the borrowers/defendants, if any.

SCHEDULE OF PROPERTY/SECURITY: As per the particulars available in APPLICATION

We, have arrived at settlement terms willing before the Lok Adalat held on 25.11.16 in the premises of DRT, Madurai. No coercion of force is applied to arrive at settlement. This case may be disposed of, as settled accordingly.

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Place: Madurai

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petitioner are forged, lodged a criminal complaint on 18.06.2015 *inter alia* under Section 156 of the 'Code of Criminal Procedure, 1973' ('Cr.P.C.' for brevity). This is vide criminal case being Cr.M.P.No.2729 of 2015 on the file of the Hon'ble Jurisdictional Magistrate's Court ie., JM Court No.I, Nagercoil. It is important to note that this criminal complaint pertains only to two (2) documents and those two (2) documents are sale deeds in favour of writ petitioner's father dated 05.03.1983 registered as Document No.250/1983 on the file of the jurisdictional Sub-Registrar's Office and settlement deed dated 03.07.2007 registered as Document No.2438/2007 on the file of the jurisdictional Sub-Registrar's Office wherein writ petitioner's father has made a settlement in favour of writ petitioner on the strength of 05.03.1983 sale deed. To be noted, the complaint of fraud is only with regard to one document namely settlement deed dated 03.07.2007, whereas 1983 sale deed is the title deed of the settlor (father of writ petitioner). While these two (2) are the documents which form subject matter of criminal case, writ petitioner has now sought return of remaining seven (7) documents pursuant to aforementioned settlement memo before the jurisdictional Lok Adalat dated 25.11.2016 and subsequent closure report dated 28.03.2017. Those seven (7) documents as follows:

'1.Document No.2768/2008 dated on 20.03.2008 of Malapalayam Sub Registrar Office;

2.Original general power of attorney document No.604/2007 dated 16.04.2007 of Malapalayam Sub Registrar Office;

3.Original general power of attorney document no.566/2007 dated 09.04.2007 of Malapalayam Sub Registrar Office;

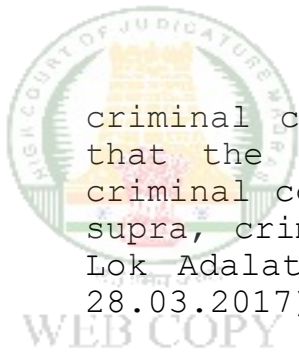
4.Original general power of attorney document no.1183/2007 dated 18.04.2007 of Malapalayam Sub Registrar Office;

5.Original sale deed no. 3542/2004 of Eadalakudi Sub Registrar Office dated on 15/12/2004 standing in the name of guarantor Rajappa.P;

6.Original partition deed no.240/1982 of Eadalakudi Sub Registrar Office dated on 10.02.1982 standing in the name of Guarantor P.Muthusamy Nadar;

7.Original Sale deed No.1833/1977 of Rajakkamangalam Sub Registrar Office dated on 17.11.1977 stands in the name of Guarantor Ganga bai.'

6. There is no disputation or disagreement before this Court that aforementioned seven (7) documents which form subject matter of instant writ petition are not subject matter of aforementioned



criminal complaint. There is also no disputation or disagreement that the settlement was arrived at before the Lok Adalat while criminal complaint was pending. To be noted, as already alluded to supra, criminal complaint is dated 18.06.2015 and settlement before Lok Adalat is dated 25.11.2016 (followed by closure report dated 28.03.2017).

7. Learned counsel for writ petitioner submitted that he is not seeking return of two documents which form subject matter of the criminal complaint. Learned counsel for writ petitioner also urged that this is without prejudice to the rights and contentions of writ petitioner qua the allegation that settlement deed is forged.

8. Responding to the above, learned counsel for respondent Bank adverted to the Bank's policy on Fraud Risk Management and submitted that the complaint was lodged pursuant to such a policy.

9. What is of relevance is Clause (vii) of Clause 8.0 captioned 'Filing Complaints with Law Enforcement Agencies'.

10. A perusal of the aforesaid Clause makes it clear that the lodging of criminal complaint in cases of this nature is for twin purpose, one for recovery and other to set law into motion in public interest. More important is Clause 13.0 which deals with closure of fraud cases which reads as follows:

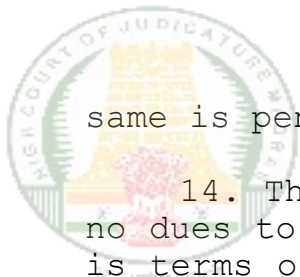
'13.0 Closure of Fraud Cases:

The guidelines prescribed by RBI for closure of fraud cases by Public Sector Banks will be followed by the Bank. Focused attention will be required at all levels while dealing with fraud cases to ensure that they are closed expeditiously after complying with RBI's guidelines.'

11. A perusal of Clause 13.0 reveals that there can be closure pending criminal case. In other words closure of cases where there is allegation of fraud should be after lodging a criminal complaint. In the instant case, that has been adhered to in letter and spirit by the respondent Bank.

12. This takes us to the trajectory of the criminal case. In the criminal case in the jurisdictional criminal Court, the jurisdictional Magistrate has passed an order dated 13.07.2015 directing FIR to be registered.

13. It is the case of the learned counsel for respondent Bank that the jurisdictional police authorities have not registered First Information Report (FIR) and therefore another petition has been filed in the same Magistrate's Court, complaining of breach and the



same is pending vide Cr.M.P.No.1425 of 2016.

14. There is no disputation or disagreement that now, there are no dues to the Bank from the writ petitioner. What is of relevance is terms of settlement vide settlement memo dated 25.11.2016 before the jurisdictional Lok Adalat which has been scanned and reproduced supra. In Clause 2 of the terms of settlement, it has been agreed to by the writ petitioner as well as respondent Bank that all the documents will be released within a period of one month after completion/payment of last installment of agreed amount. As already alluded supra, there is no disputation or disagreement that all the installments as agreed before Lok Adalat have since been paid and there are no dues from the writ petitioner to the respondent Bank.

15. In the settlement before lok adalat dated 25.11.2016, which has crystalised into an order in the proceedings before said DRT on which both parties have acted upon, there is no mention about the criminal complaint or the two documents ie., 1983 parent sale deed or alleged forged settlement deed which form subject matter of the criminal complaint. Nothing prevented the respondent Bank from mentioning about this criminal complaint before Lok Adalat. Therefore, going by strict interpretation of the terms of settlement particularly Clause 2 of terms of settlement, Bank should return all the documents including the two documents which form subject matter of criminal complaint. Also to be noted, the terms of settlement before lok adalat was followed by the closure report also.

16. Notwithstanding the aforesaid position, writ petitioner has come up with instant writ petition seeking return of seven (7) documents excluding the two documents qua criminal complaint, though the complaint is only with regard to settlement deed, other document being parent deed of the settler.

17. This Court has carefully considered the rival submissions and various averments in the case file.

18. This Court is left with considered view that no hardship adversity, or loss will be caused to the respondent Bank if seven documents which form subject matter of the prayer in the instant writ petition are returned to the writ petitioner leaving it open to the criminal complaint to be carried to its logical end. This would in the considered view of this Court balance the rights of both the parties. It is also to be borne in mind that fraud qua settlement deed as of today is an allegation and if established would not affect respondent Bank or criminal complaint. One reason is, admittedly there are no dues from writ petitioner to respondent Bank and admittedly all payments as per Lok Adalat settlement now have been made. Second reason is, only seven documents excluding the two forming part of criminal complaint are being returned.



19. In the light of the narrative thus far, following order is passed:

(a) Documents adumbrated in the prayer of this writ petition being 1.Document No.2768/2008 dated on 20.03.2008 of Malapalayam Sub Registrar Office; 2.Original general power of attorney document No.604/2007 dated 16.04.2007 of Malapalayam Sub Registrar Office; 3.Original general power of attorney document no.566/2007 dated 09.04.2007 of Malapalayam Sub Registrar Office; 4.Original general power of attorney document no.1183/2007 dated 18.04.2007 of Malapalayam Sub Registrar Office; 5.Original sale deed no. 3542/2004 of Eadalakudi Sub Registrar Office dated on 15/12/2004 standing in the name of guarantor Rajappa.P; 6.Original partition deed no.240/1982 of Eadalakudi Sub Registrar Office dated on 10.02.1982 standing in the name of Guarantor P.Muthusamy Nadar; 7.Original Sale deed No.1833/1977 of Rajakkamangalam Sub Registrar Office dated on 17.11.1977 stands in the name of Guarantor Ganga bai, shall be returned by the respondent Bank to the writ petitioner within a fortnight from the date of receipt of a copy of this order and respondent bank shall also give closure/termination letters including cancellation of memorandum of deposit of title deeds;

(b) Criminal complaint lodged by the Bank being Cr.M.P.No.2729 of 2015 on the file of the Judicial Magistrate No.I, Nagercoil shall be proceeded with on its own merits and in accordance with law, uninfluenced by observations in this order;

(c) Return of the remaining two documents namely sale deed in favour of writ petitioner's father dated 05.03.1983 registered as Document No.250/1983 on the file of the jurisdictional Sub-Registrar's Office and settlement deed dated 03.07.2007 registered as Document No.2438/2007 on the file of the jurisdictional Sub-Registrar's Office to the writ petitioner will obviously stand governed by the outcome of the criminal proceedings which have been initiated.



20. Instant Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (CO)

WEB COPY

// True Copy //

Sub Assistant Registrar(CS)

sm

Encl: Xerox copy of the scanned Images

To
Chief Manager,
State Bank of India (SME),
Nagercoil Branch,
14 - B, Disillery Road,
Nagercoil & Post,
Kanyakumari District,
Pin: 629001.

+1 CC to M/s.T. ARUL, Advocate (SR-95628[F] dated 01/11/2019)

Order made in
W.P(MD)No.10431 of 2019
Dated: 30.10.2019

JMN(15.11.2019) 8P : 3C