A.No.2225 of 2020
in
O.P.No.544 of 2008

P.T. ASHA, J,

The above application is filed for a direction to the Registry to hand over three Fixed Deposit Receipts which have been deposited with the Registry and permit the 1st petitioner Trust to withdraw Rs.46,06,362/- which was credited to the above Original Petition into the 1st petitioner's Current Account bearing Account No.834162511 in the name of M/s.Pavalai Kalyanasundara Mudaliar Trust.

2.The facts preceding the filing of the above application are hereinbelow narrated:

The petitioner Trust which is the Private Trust had invoked the provision of 34 of the Indian Trust Act seeking permission to sell the petition mentioned properties which were 8 in numbers.

3.This Court by order dated 06.02.2009 was pleased to permit the sale of Item Nos.1, 2, 4A and 6 of the schedule mentioned properties. The order clearly stipulates the minimum sale consideration at which each of the properties has to be sold and the followings are the details:

Item – 1 - Not less than Rs.9,05,04,375/-

Item – 2 - Not less than Rs.20,00,000/-

Item – 4A - Not less than Rs.5,43,00,000/-

Item - 6 - Not less than Rs.20,00,000/-

4.The order further directed the sale consideration to be invested in Fixed Deposit in the name of the 1st petitioner Trust in Indian Bank, North Mada Street, Mylapore, Chennai, for five years and the deposit receipts were to be deposited with the Registry of the Court. The Bank was directed not to entertain any request for the closure of the Fixed Deposits except with the written directions of this Court. However, the 1st petitioner Trust was entitled to draw accrued interest once in three months for the purpose of meeting the donations to the Temple in conducting religious functions as set out in the Trust Deed.

5.From the narration in the affidavit and the additional affidavit filed in support of the instant petition, it is seen that pursuant to the orders of this

Court dated 06.02.2009, the petitioner had sold Item No.6 for a sale consideration of Rs.20 lakhs under a Sale Deed dated 07.05.2009 registered as Doc.No.472/2009 on the file of SRO, Sowcarpet. As regards Item No.1, the same was part of a larger extent and a portion of the same was agreed to be sold under a registered Agreement of Sale dated 07.09.2009 registered as Doc.No.6319/2009 on the file of SRO, Sembium and an advance amount of Rs.6,04,372/- was received. In the case of Item No.2, the same had been sold under two Sale Deeds of Rs.10 lakhs each on 14.09.2009 registered as Doc.Nos.1057 and 1058 of 2009 on the file of SRO, Sowcarpet. The Sale in respect of Item No.1 of property has not gone through and the advance continues to remain in the Fixed Deposit. The Agreement holder has not initiated any steps either for specific performance or for return of the money. Therefore, it is essential that the same has be retained in Fixed deposit. The sale amounts have been deposited under three Fixed Deposits which are detailed hereinbelow:

> *"1.FD Receipt No.0519827 dated 09.05.2009 issued by Indian Bank, Head Office, Chennai – 1 for a sum of Rs.20,00,000/- for a period of 5 years.*

2.FD Receipt No.0520910 dated 16.09.2009 issued by Indian Bank, Head Office, Chennai – 1 for a sum of Rs.20,00,000/- for a period of 5 years.

3.FD Receipt No.0521260 dated 04.11.2009 issued by Indian Bank, Head Office, Chennai -1 for a sum of Rs.6,06,362/- for a period of 5 years."

6.Further, the applicant seeks to withdraw the amount for the purpose of securing the Trust property from encroachment by constructing a compound wall around the property. In the affidavit filed in support of the petition, it has been stated that most of the remaining properties has been encroached by the third parties. Since the Trust does not have funds to secure the property the present application has been filed.

7.M.Mohan, who argued on behalf of the learned counsel for the petitioner would submit that this Court had directed the amounts to be deposited for a period of 5 years and that the Fixed Deposit has been periodically renewed and there is every likelihood for being renewed for a further period. Therefore, it is essential that this Court passes orders so as to enable the petitioner Trust to have funds putting up constructions.

8.Heard the learned counsel for the petitioners and perused the documents.

9.Admittedly, some transactions in respect of a portion of Item No.1 of property have not gone through and the advance amount continues to be in Fixed Deposit and the same becomes refundable if demanded by the Agreement Holder and if so legally permitted. Therefore, the application for foreclosing all the three Fixed Deposits cannot be ordered at this moment.

10.Considering the fact that sufficient cause for foreclosing the two of the Fixed Deposits, namely,

(1).FD Receipt No.0519827 dated 09.05.2009 issued by Indian Bank, Head Office, Chennai – 1 for a sum of Rs.20,00,000/- for a period of 5 years.

(2).FD Receipt No.0520910 dated 16.09.2009 issued by Indian Bank, Head Office, Chennai – 1 for a sum of Rs.20,00,000/- for a period of 5 year,

have been made out, this Court is inclined to permit the petitioners to collect the said two Fixed Deposits from the Registry of this Court and on receiving the said Fixed Deposit Receipts, the applicant Trust can approach the Indian Bank, Head Office, Chennai.-1 (from whom the Fixed Deposit have been taken) for foreclosing the Fixed Deposit Receipts. On receiving the said original Fixed Deposit Receipts, the Bank shall transfer a sum of Rs.40 lakhs to the petitioner's account with the Indian Bank, North Mada Street, Mylapore, Chennai, in Current Account No.834162511.

11.The third Fixed Deposit Receipt *No.0521260 dated 04.11.2009* ny Indian Bank, Head Office, Chennai – 1 for a sum of Rs.6,06,362/- shall be renewed on the very same terms for a further period of 3 years.

This Application is ordered on the above lines.

29.09.2020

mps

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