

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2020

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MRS.JUSTICE R.HEMALATHA

W.P.No.9248 of 2020 &
WMP.No.11277 of 2020

P.Natarajan

.. Petitioner

.Vs.

1. The Authorized officer,
Omkara Asset Reconstruction Pvt. Ltd.,
57/29, Appachi Nagar, Kongu Nagar Extension,
Tiruppur 641 605.

2. The Branch Manager,
South Indian Bank Ltd.,
No. 256/158, Opp to taluk Office,
Kumaran Road, Thiruppur 641 601.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Cetrriorarified Mandamus calling for the records pertaining to the impugned e-mail order of revocation of One Time Settlement dated 20.05.2020 issued by the 1st respondent to the petitioner and to quash the same and consequently direct the 1st respondent to receive the balance amount as per the revised period of One Time settlement dated 01.05.2020 and to discharge to entire debt in respect of the petitioner loan by returning all the documents furnished towards security.

For Petitioner

..

Mr.V.J.Arul Raj

For Respondents

..

Mr.Mahesh Kumar for R1

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

This writ petition has been filed by the petitioner, who is the borrower, challenging the order dated 20.05.2020 passed by the first respondent, by which, the petitioner was informed that the request made by him cannot be accepted and, therefore, the One Time Settlement (OTS) approved on 19.12.2019 stands cancelled.

2.This case has got a chequered history. The petitioner was a borrower of the second respondent. At that point of time, the title deeds including the deeds relating to the encumbered property were deposited. However, the petitioner has alienated one of the prime properties on 19.12.2015. It appears that the first respondent was not aware of the same. Thereafter, the sale agreement was registered on 31.12.2015 between the first and the second respondents preceded by agreement between the petitioner and the first respondent.

3. After coming to know of the alienation by the petitioner, a complaint was given by the first respondent. The petitioner also filed a suit in Mumbai in S.C.No.2455 of 2019 against the assignment itself. Thereafter, One Time Settlement was arrived at between the petitioner and the first respondent. According to the 1st respondent, the said One Time Settlement itself was arrived at by fraud on the part of the petitioner. It is the further case of the first respondent that the No Objection Certificate obtained itself is an act of fraud for the property which has already been alienated by the petitioner. The petitioner did not comply with the terms of the One Time Settlement arrived at leading to its withdrawal.

4. We do not wish to go into the reasons behind it. The petitioner once again filed a suit in O.S.No.41 of 2020 before the District Court, Palladam, on 27.05.2020. Incidentally, the petitioner filed an application in S.A.No.220 of 2020 on the file of Debts Recovery Tribunal, Coimbatore, on 21.05.2020 aggrieved over the cancellation of the One Time Settlement through the order of the first respondent in 20.05.2020.

5. Without indicating all the above, particularly the fact that the petitioner has already approached the Debts Recovery Tribunal, Coimbatore, he filed this writ petition and has also obtained interim orders before this Court, which has been complied with.

6.The learned counsel appearing for the petitioner submitted that the interim order passed by this Court has been complied with. The petitioner is willing to comply with the other conditions. Therefore, considering the above said facts, the writ petition will have to be allowed. The learned counsel further submitted that in view of the urgency involved, the petitioner bonafidely did not make a reference to the pending proceedings before the Debts Recovery Tribunal though the very same order under challenge itself has been challenged before it. The learned counsel further submitted that inasmuch as the Tribunal is going to function from 18th August, 2020, appropriate interim protection may be given till such time, without going into the merits of the case.

7. The learned counsel appearing for the first respondent submitted that the facts as indicated in the typed set of papers filed and in the affidavit filed would clearly show the conduct, behaviour and attitude of the petitioner. It is a clear case of falsehood by the petitioner apart from suppression of material facts which would involve issuance of No Objection Certificate, effecting sale on 19.12.2017 which is even prior to the sanction agreement entered into by the petitioner with the first respondent on 15.11.2015. This Court does not have jurisdiction to go into the validity of One Time Settlement which is a settled position of law. Furthermore, the petitioner approached the Debts Recovery Tribunal and in any case, Article 226 of the Constitution of India is not to be invoked against the private entity like the first respondent, and, therefore, looking from any perspective, this writ petition will have to be dismissed.

8. We do find force in the submission made by the learned counsel appearing for the first respondent. On two counts, the writ petition is not maintainable. One is on the jurisdiction of a writ being issued against a private entity, namely, the first respondent. Secondly, the petitioner did not make a reference to the challenge made already before the Debts Recovery Tribunal against the very same impugned order and in any case, in view of the effective alternative remedy available no writ would lie. In such view of the matter, any interim order passed by this Court also would not give jurisdiction to the Court and incidentally any right to the petitioner. We do not wish to express anything on the merit which might militate against the petitioner. Perhaps, we would not have entertained the writ petition had we been known that the petitioner had already challenged the said order before the Debts Recovery Tribunal, Coimbatore.

9. Be that as it may, we would only dispose of the writ petition leaving all the issues open to the parties to raise before the Debts Recovery Tribunal. We request the Debts Recovery Tribunal, Coimbatore, to dispose of the matter within a period of two months from the date of receipt of a copy of this order. The parties are at liberty to get appropriate interim orders before the Debts Recovery Tribunal, Coimbatore.

With the above directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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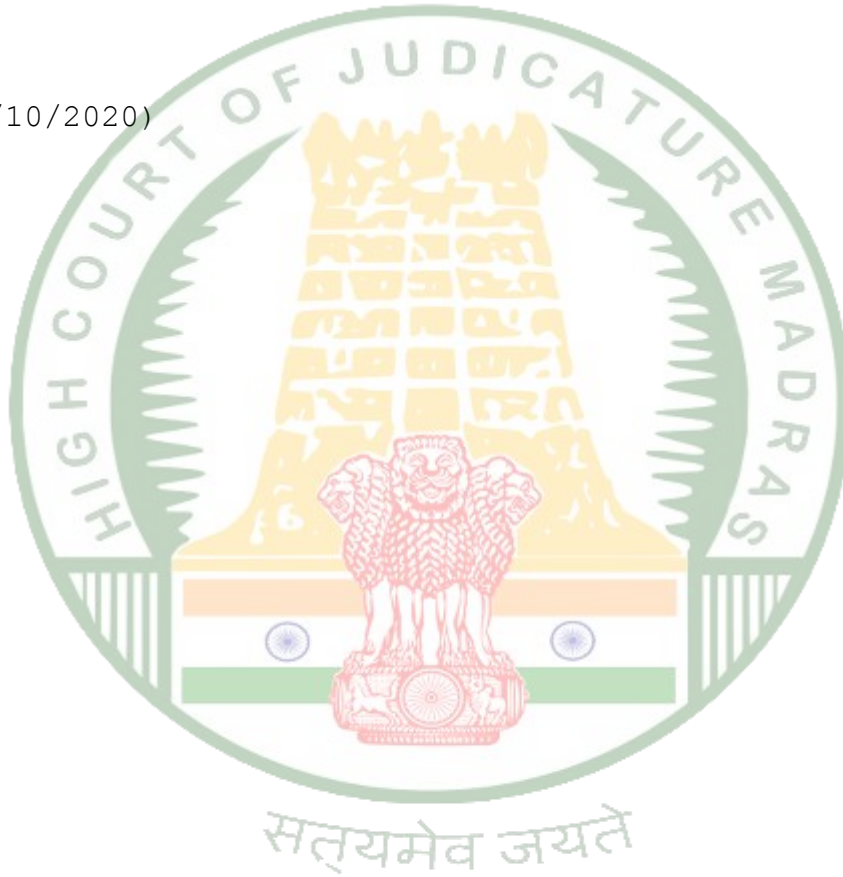
Sub Assistant Registrar

To

1. The Debts Recovery Tribunal,
Coimbatore.
2. The Branch Manager,
South Indian Bank Ltd.,
No. 256/158, Opp to Taluk Office,
Kumaran Road, Thiruppur 641 601.

W.P.No.9248 of 2020

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rr ii (07/10/2020)



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