

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.11811 of 2020

and

WMP.No.14522 of 2020

T.Varun Kumar

No.155-156, T.T.K.Road,
Alwarpet,
Chennai - 600 018

...Petitioner

Vs.

1. The Authorised Officer,
Standard Chartered Bank,
No.58, Armenian Street,
Chennai - 600 018.
2. The Commissioner of Police,
Greater Chennai Police,
No.132, Commissioner office Building,
EVK Sampath Road,
Vepery, Chennai - 600 007.
3. The Teynampet Police,
E-3 Police Station,
Teynampet,
Chennai - 600 018.
4. P.Raja,
S/o.P.Pandi,
No.9, Lawyer Chinnathambi Street,
Old Washermanpet,
Chennai - 600 021.
5. R.Selva Asiad,
Wife of P.Raja,
No.9, Lawyer Chinnathambi Street,
Old Washermanpet,
Chennai - 600 021.

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, forbearing the Respondents 2 and 3 from interfering with the Civil Dispute of the petitioner with the Respondents 4 and 5 in RA (SA) No.109 of 2018 and RA (SA) No.83 of 2019, pending on the file of the DRAT Chennai and consequently forbear the Respondents 3 and 4 from interfering with the petitioner's possession of the property bearing the Door No.155-156, T.T.K.Road, Alwarpet, Chennai - 600 018.

For Petitioner : Mr.Balasubramaniam
For S.Kannathasan

For Respondents: Mr.S.Karthikeyan (For R2 & R3)
Additional Public Prosecutor.

ORDER

This Writ Petition has been filed for issuance of a Writ of Mandamus, forbearing the respondents 2 and 3 from interfering with the Civil Dispute of the petitioner with the respondents 4 and 5 in RS(SA).No.109 of 2018 and RA(SA).No.83 of 2019, pending on the file of the DRAT Chennai along with Consequential prayer of forbearing the respondents 3 and 4 from interfering with the petitioner's possession of the property bearing Door No.155-156, T.T.K.Road, Alwarpet, Chennai-600 018.

2.The learned counsel appearing for the petitioner would submit that the petitioner availed loan from the first respondent bank by mortgaging his property. The petitioner has defaulted in repayment of loan and as such, his account became non performing asset and as such, the first respondent initiated proceedings under SARFAESI Act. The petitioner had challenged the said proceedings in SA.No.153 of 2011 on the file of DRAT-II, Chennai and the same was dismissed. Aggrieved by the same, he has filed an Appeal in RA.No.39 of 2012. In the mean while, the petitioner came to understand that on 20.01.2015, some conditional order has been passed by Debts Recovery Appellate Tribunal in R.A. No.39 of 2012, wherein the petitioner was directed to deposit the amount due as on date of sale, but the petitioner could not able to comply the said condition. However, the Bank has issued a Sale certificate in favour of 5th respondent herein and challenging the sale certificate, the petitioner and his mother filed a Second Appeal in S.A. (SR) No.567 of 2018 and it was posted for maintainability on the ground that sale certificate was not produced. Thereafter, it was rejected on the ground of limitation. However, as against the conditional order passed in SA.No.16 of 2015, the

petitioner and his mother filed Appeal in RA(SA).No.109 of 2018 before Debts Recovery Appellate Tribunal, Chennai and granted order of protection from dispossession of the petitioner's property on condition that the petitioner shall deposit the first instalment of Rs.57.50 Lakhs within a period of four weeks from 11.04.2018 and second installment of Rs.57.50 to be paid within a period of four weeks. Thereafter, the petitioner complied with the first condition and Debts Recovery Appellate Tribunal confirmed the interim order by an order dated 09.05.2018. Thereafter, the second condition was also complied with and the interim order granted by the Debts Recovery Appellate Tribunal is extended and it is still continuing and the same is in force. While being so, the sale confirmation was also challenged in RA(SA).No.83 of 2019 and DRAT has granted interim order against the confirmation of the sale. In the meanwhile, the respondents 4 and 5 attempted to dispossess the tenants in the petitioner's property with the help of the respondents 2 and 3 herein. Therefore, the petitioner has filed petition in Crl.O.P.No.12684 of 2020 before this Court seeking a direction to the respondent police not to harass the petitioner on the complaint lodged by the respondents 4 and 5 and this Court by an order dated 20.08.2020 directed the police to issue summons and on such summons, the petitioner is directed to appear for enquiry. Even then, the 5th respondent influenced the 3rd respondent and came to the petitioner's house. Therefore, the petitioner was constrained to file this Writ Petition.

3. Per contra, the learned Additional Public Prosecutor submitted that though the proceedings are pending before the Debts Appellate Recovery Tribunal under SURFAESI Act in respect of the loan borrowed by the petitioner, 4th and 5th respondents have purchased the property in auction through the first respondent herein. In this regard, there is a dispute between the petitioner and the respondents 4 and 5 herein and also in respect of a dispute in putting up tenants in the property. In this regard, the respondents 4 and 5 have lodged complaint as against the petitioner and they were issued CSR.No.228 of 2020. He has further submitted that in fact, the petitioner filed petition directing the respondent police not to harass him in Crl.O.P.No.12684 of 2020, in which this Court directed the 3rd respondent to issue summons to the petitioner and conduct enquiry in the manner known to law in CSR.No.228 of 2020. Even before receiving the said order, the petitioner has come forward with this petition. Only after receipt of the order from this Court, the 3rd respondent is about to issue summons to the petitioner for enquiry in CSR.No.228 of 2020. However, the 3rd respondent has never entered into the premises of the petitioner. Only after the complaint received from 4th and 5th respondents, CSR.No.228 of 2020 was issued and enquiry is pending.

4. Heard Mr.Balasubramaniam, learned counsel appearing for the petitioner and Mr.S.Karthikeyan, learned Additional Public Prosecutor for the respondents.

5. It is seen that the petitioner's property was auctioned under SURFEASI proceedings by the first respondent and the same was purchased by the respondents 4 and 5 herein. The sales certificate as well as the other proceedings are under challenge before the Debts Recovery Appellate Tribunal and the proceedings are pending in RA(SA).No.109 of 2018 and RA(SA).No.83 of 2019 on the file of Debt Recovery Appellate Tribunal, Chennai.

6. In the meanwhile, in respect of taking possession of the property purchased by 4th and 5th respondents herein, there is a dispute between them and as such, the respondents 4 and 5 have lodged a complaint before the 3rd respondent. On receipt of the same, 3rd respondent issued CSR.No.228 of 2020 and the enquiry is pending. The petitioner also filed petition for direction directing the respondent police not to harass the petitioner before this Court in Crl.O.P.No.12684 of 2020 and the same was ordered by an order dated 20.08.2020 by this Court directing the 3rd respondent to issue summons to the petitioner and conduct enquiry. Now, once again the petitioner has filed this Writ Petition for the different set of prayer for forbearing the police officials from interfering with the civil dispute between the petitioner and the respondents 4 and 5 herein.

7. Considering the above facts and circumstances of the case, the 3rd respondent has no role to play in the civil dispute pending between the petitioner and respondents 4 and 5 herein. The 3rd respondent can very well enquire on the complaint lodged by the 4th and 5th respondents in CSR.No.228 of 2020 with the petitioner. But except this complaint, the 3rd respondent is directed not to interfere with the civil dispute between the petitioner and respondents 4 and 5 herein.

8. It is also made it clear that if any offence is committed by petitioner or the respondents 4 and 5, the 3rd respondent is at liberty to take appropriate action as against the offenders in accordance with law.

9. In view of the above discussion, this petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Authorised Officer,
Standard Chartered Bank,
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Chennai - 600 018.
2. The Commissioner of Police,
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3. The Teynampet Police,
E-3 Police Station,
Teynampet,
Chennai - 600 018.
4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Kannathasan, Advocate Sr.28684

W.P.No.11811 of 2020

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srg 07/10/2020



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