

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2020

CORAM

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

W.P.No. 32952 of 2019
& W.M.P.Nos. 33386 & 33387 of 2019 and 6454 of 2020

Rajan Petitioner

Vs

1.The Authorized Officer,
M/s.State Bank of India,
Pudur Pirivu Branch,
Two Win Chambers, Pudur Pirivu,
Dharapuram Road,
Tirupur - 641 601.

2.M/s.Vastra Textiles,
Rep. by its partner,
Mr.P.Sureshkumar,
No.5A, 4th Cross Street,
Palayakadu, B.S.Road,
Tirupur - 641 607.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records from the Debts Recovery Tribunal, Coimbatore by its order dated 13.11.2019 in IA (SR) No.9937 of 2019 in S.A.No.376 of 2019 and quash the same and direct the 1st respondent not to take physical possession of the property situated at S.F.No.258/2, D.No.2/11, Palayakadu, 1st Cross Street, South of Uthukuli Main Road, (B.S.Sundaram Road), Palayakadu, Mannarai Village, Tirupur Taluk and District measuring an extend of 0.44 acres (44 cents) within the Tirupur Registration District, Tirupur Joint II Sub-Registration District.

For Petitioner .. Mr.Om Prakash, Sr. Counsel
for Mr.K.A.Ramakrishnan

For Respondents .. Mr.K.Chandrasekaran for R1
Mr.M.S.Krishnan, Sr. Counsel
for Mr.S.N.Somasundar
for R2

ORDER

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

This writ petition has been filed by the petitioner challenging the order passed by the Debts Recovery Tribunal in I.A.(SR) No.9937 of 2019 in S.A.No.376 of 2019, by which, further extension sought for, was rejected after exercising its discretion on the earlier occasions.

2.The petitioner is admittedly a borrower. The second respondent is both the erstwhile lessee and the auction purchaser in whose favour the auction has been confirmed pursuant to the non-compliance of the order passed by the Debts Recovery Tribunal. Admittedly, as seen from para 7 of the affidavit of the petitioner, there is indeed an agreement between the petitioner and the second respondent, pursuant to which, the second respondent has paid certain amount. This amount is also stated to be used by the petitioner towards discharge of partial loan belonging to the Bank. The petitioner was issued with the possession notice under the SARFAESI Act, which has not been challenged. Thereafter, sale notice was issued. Before the auction, the petitioner approached this Court and obtained an interim order. The interim order has not been complied with by the petitioner despite opportunities given including the extension sought for, though complied in part. In the meanwhile, the sale certificate has been issued in favour of the second respondent. Thereafter, the petitioner has filed this writ petition and obtained an order of status quo, pursuant to the submission made by the learned counsel appearing for the petitioner that the remaining instalment would be paid without prejudice to the contentions of the parties.

3.Learned senior counsel appearing for the petitioner submitted that under those circumstances, while maintaining the interim order, it would only be appropriate to direct the Debts Recovery Tribunal to dispose of the application filed in S.A.No.376 of 2019.

4.Learned senior counsel appearing for the second respondent submitted that the petitioner has suppressed the factum of subsequent sale certificate issued in favour of the second respondent. Para 7 of the affidavit filed by the petitioner would clearly indicate the facts governing. It is not as if the petitioner was not given sufficient time. In fact , the Tribunal has exercised its discretion twice and only thereafter dismissed the application filed by the petitioner. Therefore, there is no need to exercise the discretion of this Court by invoking Article 226 of The Constitution of India over the order passed by the Tribunal, which is sought to be invoked, without exhausting the appellate remedy.

5.Any observation made on merit would certainly jeopardise the interest of the parties as the main case is pending in S.A.No.376 of 2019. Admittedly, the second respondent has paid the entire sale consideration and so also the petitioner in complying with the conditional order passed, though belatedly.

6.In such view of the matter, we do not want to express anything on the merits of the case except by directing the Debts Recovery Tribunal to dispose of S.A.No.376 of 2019 within a period of six weeks from the date of receipt of a copy of this order as pleadings are complete. While doing so, we direct status quo to be maintained by the parties with respect to the possession. We may also record the fact that the second respondent continues to be in possession of 19.87 cents of the land out of the larger extent, which is the subject matter of the proceedings before the Debts Recovery Tribunal.

7.With the above direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

सत्यमेव जयते
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

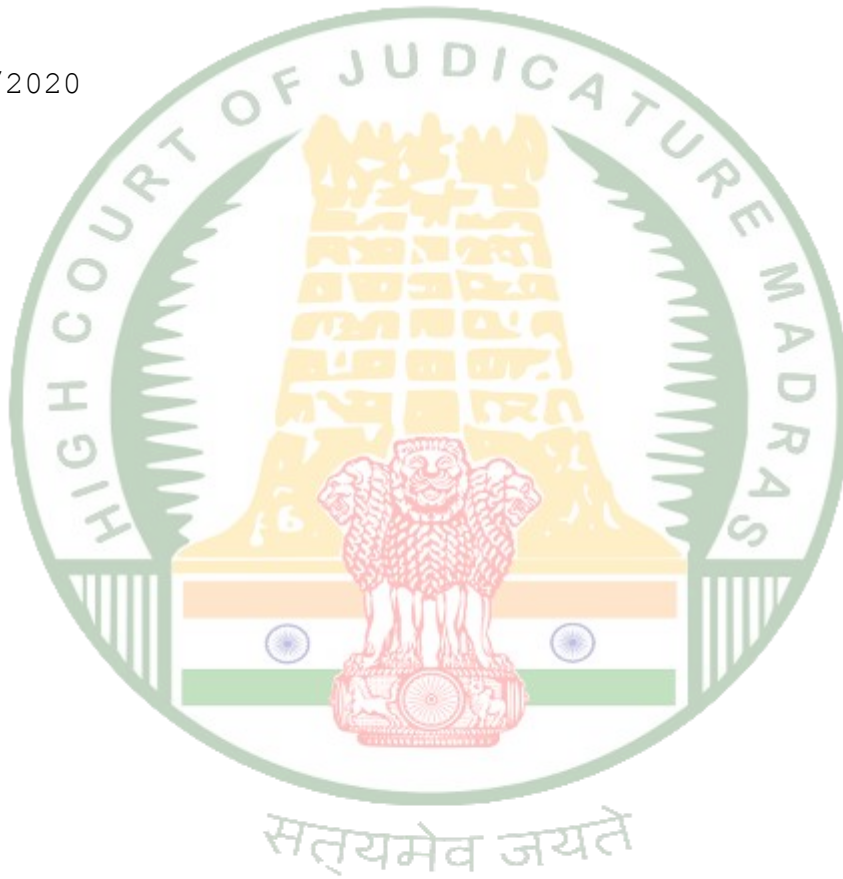
- 1.The Authorized Officer,
M/s.State Bank of India,
Pudur Pirivu Branch,
Two Win Chambers, Pudur Pirivu,
Dharapuram Road,
Tirupur - 641 601.

2.The Debts Recovery Tribunal,
Coimbatore.

+1cc to to M/s.N.Somasundaar, Advocate Sr.25145
+1cc to Mr.K.A.Ramakrishnan, Advocate Sr.25074

W.P.No. 32952 of 2019

rld[co]
srg 03/08/2020



WEB COPY