



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P.(MD).No.24863 of 2018

and W.M.P.(MD).No.22548 of 2018

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State Bank of India,
Rep. by its Branch Manager,
Surandai Brach, Surandai,
Tirunelveli District.

.. Petitioner

Vs.

1.The Superintendent of Police,
Tirunelveli District, Tirunelveli.

2.The Inspector of Police,
Surandai Police Station,
Surandai, Tirunelveli District.

3.National Collateral Management Services Ltd.,
Rep. by its Senior Executive,
Classic Tower, Door No.103, 5th Floor,
Tiruchy Road, Race Course,
Near Coimbatore Government Hospital,
Coimbatore - 641 018.

4.The Branch Manager,
Axis Bank Ltd.,
Ilangi, Tenkasi Taluk,
Tirunelveli District.

5.Sri Lakshmi Modern Rice Mill,
Rep. by its Prop. Sudalaimadan,
S/o Mayandi Nadar,
45-C, Pillaiyar Kovil Street,
G.Meenakshi Puram,
Idayarthavanai, V.K.Pudur Taluk,
Tirunelveli District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, directing the respondents 1 to 4 to release the pledged commodity of paddy stored in the godown belongs to the 5th respondent herein situated at E.Meenakshipudur, Idayarthavanai, V.K.Pudur Taluk, Tirunelveli District, based on the petitioner's complaint, dated 08.12.2018 and CSR No.501 of 2018, dated 10.12.2018, within the time stipulated by this Court.



For Petitioner : Mr.Ananth C.Rajesh
For Respondents: Mr.A.Muthu Karuppan for R1 and R2
Additional Government Pleader
Mr.R.J.Karthik for R3
Mr.M.Senthil Kumar for R4
Mr.M.S.Suresh Kumar for R5

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ORDER

This writ petition has been filed by the petitioner for issuing a Writ of Mandamus, directing the respondents 1 to 4 to release the pledged commodity of paddy stored in the godown belongs to the 5th respondent herein situated at E.Meenakshipudur, Idayarthanai, V.K.Pudur Taluk, Tirunelveli District, based on the petitioner's complaint, dated 08.12.2018 and CSR No.501 of 2018, dated 10.12.2018, within the time stipulated by this Court.

2.Prima facie this Court is satisfied that the fourth respondent can not have the control over the goods belonged to third parties which stored inside the warehouse. The owner of the warehouse does not claim any ownership over the goods. Merely because the Bank has advanced loan to the owner of warehouse and entered into hypothecation agreement in respect of the stock inside the warehouse, the hypothecation agreement will not enable the fourth respondent to have lien or right over any movable that were brought in and kept in the warehouse by third parties under separate agreement. The agreement may be enforced against any movable properties, belonging to the borrower.

3.Admittedly, in this case, the petitioner Bank has advanced loan to the trader of agriculture commodities and the third respondent is appointed as an Agency for the monitoring of movement of commodities which are offered as security for the loan transaction between the petitioner bank and the trader. It is also admitted that the goods have been hypothecated to the petitioner bank by separate document. The petitioner bank finding in difficult to recover the money from the trader has taken action for realising the money by selling the commodities which were stored inside the warehouse belonged to the fifth respondent. Though substantial bogs of paddy which were hypothecated to the petitioner's bank had been removed from the warehouse by the auctioneer, it appears that the fourth respondent bank has locked the premises stating that no goods inside the warehouse can be touched by the petitioner's bank as the fourth respondent has a first charge in respect of the commodities stored inside the warehouse. The contention of the fourth respondent is not supported by the deed of hypothecation, dated 12.03.2014, signed by the fifth respondent and executed in favour of the fourth respondent. Admittedly, the goods in this instance belonged to a third party trader who had hypothecated the goods and on the security of such goods borrowed money from the petitioner bank. The fact that these commodities do not belong to the fifth respondent is also admitted by the learned counsel appearing for the fifth respondent. Merely because by an arrangement the fifth respondent has allowed the third party to store the commodities inside the warehouse does not enable the fourth respondent bank to



claim any lien or charge over such movables belonging to third parties.

4.It is stated that the fourth respondent has unlawfully locked the premises by an independent lock, so that others cannot enter into the warehouse. The learned counsel for the fifth respondent submitted that out of 7950 bags that were stored in the warehouse, auctioneer has removed only 3150 bags so far. Though it is stated by the learned counsel for the fifth respondent that the auctioneer is choosing good bags, he is not aggrieved. Learned counsel for petitioner submits that the commodities can be removed within a short time. Hence, the petitioner may give appropriate direction or instructions to the auctioneer to remove the remaining bags within a period of 15 days or at the earliest so as to avoid any further complication in this matter. The fifth respondent is entitled to collect the charges for the remaining bags as per the contract he has entered with the trader.

5.The fourth respondent shall not to prevent the petitioner or any one on the petitioner's authority to remove the paddy bags from the godown/warehouse belonged to the fifth respondent. This order is relating only to the 4800 remaining bags of paddy. The fourth respondent is directed to remove the lock to enable the petitioner to remove the paddy bags through the auctioneer.

6.Accordingly, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

TM

To

1.The Superintendent of Police,
Tirunelveli District, Tirunelveli.

2.The Inspector of Police,
Surandai Police Station,
Surandai, Tirunelveli District.

+1 CC to M/s.M.S.SURESH KUMAR, Advocate (SR-1228[F]

+1 CC to M/s.ANANTH.C.RAJESH, Advocate (SR-1241[F] dated 09/01/2020

+1 CC to M/s.M.SENTHIL KUMAR, Advocate (SR-1284[F] dated 10/01/2020

+1 CC to M/s.R.J.KARTHICK, Advocate (SR-1593[F] dated 13/01/2020)

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SMA/28/01/2020/3P/7C