IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.2239 of 2020

K. Periyasamy ....Petitioner

Vs.

1. The Branch Manager,
M/s.State Bank of India,
Kaladur Branch 8282,
6/12, N.H. Road,
Kaladur,
Tittagudi Taluk,
Cuddalore District,
Tamil Nadu - 606 304.

2. Jaganraj ....Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the first respondent to terminate the hypothecation and to hand over the harvester No.TN-31-AZ-2720.

For Petitioner : Mr.J. Joicy

For Respondents: Mr.M.L.Ganesh

ORDER

This writ petition has been filed for a Mandamus seeking for a direction to the 1st respondent to terminate the hypothecation in respect of the vehicle viz., Harvestor for agricultural purpose bearing Registration No.TN- 31- AZ-2720 and hand over the same to the petitioner.

2. It is the case of the petitioner that he availed loan for the purchase of the aforementioned Harvester from the 1st respondent bank. It is his case that he had committed default in payment of the loan instalments. However, it is his case that thereafter he has discharged the loan under the One Time Settlement (OTS) scheme to the 1st respondent on 30.03.2016. However, according to him, the 1st respondent bank assured that

hypothecation endorsement made in the said vehicle will be terminated while returning back the vehicle to the petitioner. It is the case of the petitioner that despite various attempts made by him, the 1st respondent failed to cancel the hypothecation endorsement over the subject vehicle and also failed to return the same to the petitioner. In such circumstances, this writ petition has been filed.

3. A counter affidavit has been filed by both the respondents denying the allegations of the petitioner. They have stated that the petitioner was defaulter under the loan agreement entered into with the 1st respondent. It is also stated in the counter affidavit that the 1st respondent bank brought the subject vehicle for auction due to the default committed by the petitioner. According to the 1st respondent, they seized the vehicle from the petitioner, but despite their best efforts due to the poor condition of the vehicle, they were unable to sell the same in the auction. The 1st respondent offered One Time Settlement scheme to the petitioner by which, the 1st respondent gave an offer to the petitioner to settle the amount by paying a sum of Rs.4,87,500/- under the said scheme even though the total liability was Rs.17,57,775.63/- as on 19.11.2014. It is the case of 1st respondent bank that the petitioner availed the said One Time Settlement scheme and paid the sum of Rs.4,87,500/- to the 1st respondent. It is also their case that on the said payment, the 1st respondent was willing to cancel the hypothecation and hand over the vehicle back to the petitioner. However, it is their case that the petitioner failed to take possession of the vehicle from the 1st respondent. It is also their case that the loan was discharged by the petitioner in the year 2016 and the writ petition has been filed in the year 2020 and therefore, on the ground of laches, the writ petition has to be dismissed.

4. Heard Ms.J.Joicy, learned counsel for the petitioner and Mr.M.L.Ganesh, learned counsel for the respondent.

5. The petitioner has filed before this Court the following documents in support of his case :

a) Letter issued by the Lok Adalat for therepayment of the loan
b) Legal Notice dated 07.03.2016 sent by the bank giving One Time proposal
c) Proof of settlement of the loan
d) Proof of remittance of the amount dated 12.07.2016 and account closed
e) No objection letter issued by the Bank, dated 12.07.2016
f) Acknowledgement cards

6. As seen from the typed set of papers filed by the petitioner that No Objection letter was issued by the 1st respondent bank as early as on 12.07.2016 itself to enable the petitioner to take possession of the subject vehicle, which was hypothecated earlier by the petitioner for availing the loan from the 1st respondent. However, as seen from the affidavit filed in support of the writ petition, the only communication sent by the petitioner after the issuance of the No Objection letter by the 1st respondent bank is only on 12.11.2019 through the petitioner's lawyer to the respondents seeking for return of the vehicle back to the petitioner. No reasons whatsoever have been given in the affidavit filed in support of the writ petition as to what steps the petitioner took between 12.07.2016 and 12.11.2019 for seeking return of the vehicle from the 1st respondent bank. The respondents have also filed counter affidavit stating that the petitioner was a defaulter in the repayment of the loan to the 1st respondent bank. They have also stated that due to the said default, the 1st respondent seized the hypothecated vehicle viz., Harvester from the petitioner and thereafter brought the said vehicle for sale through an auction. They have also stated that due to the poor condition of the vehicle, the seized vehicle could not be sold, as no one was interested in buying the same under the auction. It is also stated by the respondents that they were always ready and willing to handover the vehicle to the petitioner. According to them, only due to the poor condition of the vehicle, the petitioner did not take delivery of the vehicle from them. The respondents in the typed set of papers have also produced before this Court, the photographs of the subject vehicle.

7. The learned counsel for the respondent on instructions would submit that the vehicle is very much available with the 1st respondent bank and even now the petitioner can take delivery of the vehicle in as is where is condition.

8. From the above observations, it is clear that the petitioner has deliberately not taken possession of the vehicle from the 1st respondent bank despite the fact that the 1st respondent has always been ready and willing to return the vehicle back to the petitioner. As observed earlier, the petitioner has also not placed any evidence before this Court to show what steps he had taken from 2016 till 2019 for return of the vehicle from the 1st respondent bank. The contention of the 1st respondent bank before this Court is that only due to the poor condition of the vehicle, the petitioner did not take possession of the vehicle from the 1st respondent in the year 2016 itself. The said contention will have to be necessarily accepted in view of the above observations made by this Court.

9. For the foregoing reasons, there is absolutely no merit in this writ petition. Accordingly, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Branch Manager,
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Kaladur Branch 8282,
6/12, N.H. Road,
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Tittagudi Taluk,
Cuddalore District,
Tamil Nadu - 606 304.

+1 cc to M/s. C.Prasanna Venkadesh, Advocate Sr.No. 16943

W.P. No.2239 of 2020

PMK(CO)
RMP(01/04/2021)