

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

C.R.P.No.1265 of 2021

S.Venkatachalam

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Petitioner

Vs.

1. The Branch Manager
Indian Overseas Bank
Teynampet Branch
DMS Office Campus
Anna Salai, Teynampet
Chennai 600 006.

2. The Authorised Officer
Indian Overseas Bank
Asset Recovery Management Branch
Central Office, Main Building
Ground Floor, No.763, Anna Salai
Chennai 600 002.

3. M/s. Vijayplas Fabs Pvt. Ltd.
rep. by its Director S.Nainar
No.1, First Link Street
Raghavan Colony, Jaffer Khanpet
Chennai 600 083.

4. R.Balasubramanian
5. K.Meena Rama Subbulakshmi
6. T.Rajalakshmi

..

Respondents

Prayer: Petition filed under Article 227 of the Constitution of India against the order dated 30.04.2021 made in I.A.No.649 of 2021 (I.A.SR.No.686 of 2021) in S.A.No.132 of 2020 on the file of Debts Recovery Tribunal II, Chennai.

For Petitioner : Mr.P.C.Hari Kumar

For Respondents : Mr.M.L.Ganesh
for respondents 1 and 2

ORDER

(Made by the Hon'ble Chief Justice)

Issue notice to the respondents. Mr.M.L.Ganesh appears for the secured creditor.

2. The grievance of the petitioner is that notwithstanding an order of this Court passed on March 18, 2021, rejecting the petitioner's suit on the ground that the subject-matter thereof was capable of adjudication before an appropriate Debts Recovery Tribunal under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the principal prayer contained in the application to amend the pending proceedings under

Section 17 of the Act to incorporate a challenge to the mortgage sought to be enforced by the secured creditor has been declined to be taken up by the Debts Recovery Tribunal II, Chennai.

3. Prima facie, the order impugned dated April 30, 2021, appears to be erroneous and, in any event, no reasons have been furnished as to why the relevant prayer cannot be considered by the Tribunal. In a sense, the impugned order borders on being contemptuous as it is apparently contrary to the order passed by this Court on March 18, 2021. As a consequence, no further steps will be taken by the Tribunal in proceedings pertaining to this matter. No further steps will be taken by the secured creditor against the assets apparently furnished by way of security by this petitioner.

4. The secured creditor may file its counter-affidavit within a fortnight from date.

5. After this order is passed, it is submitted on behalf of the secured creditor that the order impugned dated April 30, 2021 may be set aside and the relevant Debts Recovery Tribunal be directed to

consider on merits all the prayers sought to be incorporated by way of amendment by the petitioner herein.

6. In view of such submission, the Debts Recovery Tribunal II Chennai is directed to consider on merits the entirety of the prayers made or reliefs claimed by the petitioner by way of the amendment applications dealt with in the order impugned. The order dated April 30, 2021, to the extent that it declines to entertain the prayer or relief sought as to the validity of the mortgage, is set aside. Ordinarily, this Court requests Tribunals or other adjudicatory authority and even the Courts in the district judiciary to do or refrain from doing a certain thing. But, considering the contumacious arrogance of the Tribunal evident from the order impugned, this Court has directed such Tribunal to consider the merits of the matter incorporated in the relevant prayer.

7. The directions contained in paragraphs 3 and 4 above are no longer relevant.

C.R.P.No.1265 of 2021 is allowed as indicated above. There will be no order as to costs. CMP No.9926 of 2021 is closed.

(S.B., CJ.) (S.K.R., J.)
06.07.2021

Index : yes/no

tar/kpl

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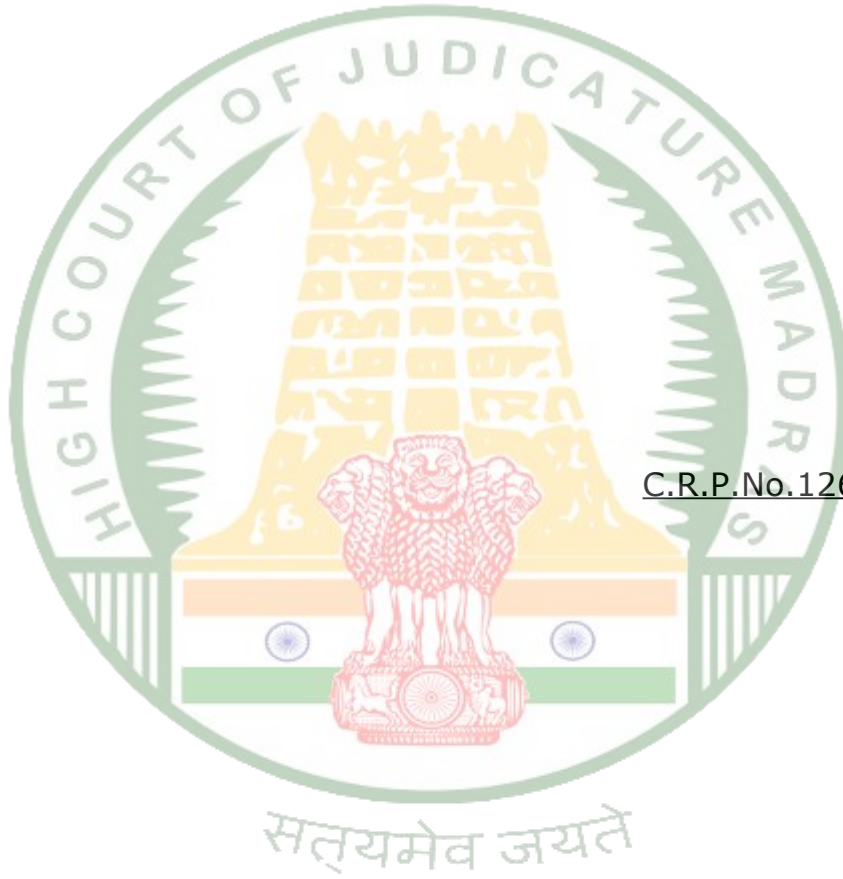
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THE HON'BLE CHIEF JUSTICE
AND
SENTHILKUMAR RAMAMOORTHY, J.

(tar/kpl)



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