



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.No.405 of 2022

Kotak Mahindra Bank Limited,
Rep. by its Senior Vice President,
Mr.G.Ramachandran Srikanth,
Asset Reconstruction Division,
5th Floor, Samson Towers,
No.402-L, Pantheon Road,
Egmore, Chennai 600 008.

... Petitioner

Versus

1. The Deputy Commissioner of Police,
Adyar,
Chennai 600 020.
2. The Station House Officer,
J-2, Adyar Police Station,
Adyar, Chennai 600 020.
3. S.Vignesh,
Advocate Commissioner,
Chamber 15, Law Chambers, High Court Buildings,
High Court,
Chennai-600 104.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ, Order or Direction in the nature of a Writ of Mandamus, directing the 1st and 2nd respondent to provide necessary police assistance to the 3rd respondent Commissioner as per the warrant issued by the Debt Recovery Tribunal II, at Chennai in DRC NO.5 of 2013 to enable the 3rd respondent, Advocate Commissioner to execute the Warrant/mission as per the warrant.

For Petitioner : Mr.H.Karthik Seshadri

For R1 & R2 : Mr.R.Vinothraja,
Government Advocate (Crl. Side)



ORDER

This Writ Petition has been filed to direct the 1st and 2nd respondents to provide necessary Police assistance to the 3rd respondent as per the warrant issued by the Debts Recovery Tribunal-II at Chennai in D.R.C.No.5 of 2013 to enable the 3rd respondent to execute Warrant/mission.

2.The learned counsel for the petitioner submitted that the petitioner/Private Bank had filed D.R.C.No.5 of 2013 before the Debts Recovery Tribunal-II at Chennai and had obtained recovery warrant, which has to be executed against the debtors. The Debts Recovery Tribunal-II, Chennai had appointed the 3rd respondent as Advocate Commissioner to attach the immovable property situated at Door.No.30, old No.60, 3rd Main Road, Gandhi Nagar, Adyar, Chennai, vide warrant of attachment, dated 20.12.2017. The 3rd respondent had filed a detailed report on 08.02.2018 stating that the premises was being locked and the warrant was unable to be executed. Thereafter, the 3rd respondent was authorized to break open the lock. Again the 3rd respondent was unable to execute the warrant due to filing of petitions by the debtors before the Debts Recovery Tribunal and before this Court and thereby, successfully stalled the execution of the warrant. In fact, the petitioner had filed a Writ Petition in W.P.No.1409 of 2021 seeking Police protection/assistance to execute the warrant, in which, this Court, by order, dated 22.01.2022 directed the 2nd respondent to provide Police assistance to the 3rd respondent in order to enable him to execute the warrant issued by the Debts Recovery Tribunal-II, Chennai. After passing the order, dated 22.01.2021, a third party counsel had informed this Court that a Writ Petition was pending pertaining to the same issue. This Court, considering the same, had recalled the order, dated 22.01.2021, vide W.M.P.No.2239 of 2021 in W.P.No.1409 of 2021.

3.The learned further submitted that the Hon'ble First Bench of this Court in W.P.No.33319 of 2019, dated 14.07.2021 had held that various petitions have been filed at the instance of the debtors, which protracted execution of warrant by the 3rd respondent and further held that the bank obtained a certificate in its favour to proceed against the some assets of the borrowers or guarantors ahead of some other assets and made it clear that any restriction imposed by the Debts Recovery Tribunal II is undone by leaving the bank free to proceed against all the properties of the debtors. The learned counsel further submitted that the order of appointment of the 3rd respondent as Advocate Commissioner had been passed in the year 2017. Till now, the warrant could not be executed by the 3rd respondent due to filing of several petitions by the debtors.



Hence, he filed this Writ Petition seeking Police protection for executing the warrant by the 3rd respondent.

4. The learned Additional Public Prosecutor appearing for the respondents 1 and 2 submitted that if the petitioner is with the Court order and the 3rd respondent needs Police protection, the same would be considered by the 2nd respondent Police without fail.

5. This Court considered the rival submissions and perused the materials available on record.

6. It is seen that the 3rd respondent was appointed in the year 2017 to attach the immovable property situated at Door.No.30, old No.60, 3rd Main Road, Gandhi Nagar, Adyar, Chennai, vide warrant of attachment, dated 20.12.2017. Thereafter, several petitions were by the debtors, due to which the 3rd respondent was unable to execute the warrant of attachment. On 14.10.2021, the Hon'ble First Bench of this Court had undone the restrictions imposed and cleared the bank to provide against all the properties of the debtors. Challenging the order, dated 14.07.2021, Special Leave to Appeal (C) Nos.13613-13614 of 2021 was filed before the Hon'ble Apex Court. The Hon'ble Apex Court, by order, dated 08.10.2021 had dismissed the same and confirmed the order of this Court, dated 14.07.2021. Hence, the bank has got no restriction to proceed with the attachment of the properties of the debtors.

7. This Writ Petition is disposed of with the following directions. The 3rd respondent is directed to execute the warrant issued to him. If he faces any obstruction, he can make a representation to the 2nd respondent Police, who shall consider the same and provide necessary Police protection for execute the order of warrant.

8. It is made clear that the 2nd respondent Police to provide necessary Police protection, within three days, on the request of the 3rd respondent. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner of Police,
Adyar,
Chennai 600 020.

2. The Station House Officer,
J-2, Adyar Police Station,
Adyar, Chennai 600 020.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.H.Karthik Seshadri, Advocate, S.R.No.2901

W.P.No.405 of 2022

MT[co]
NSK 10/02/2022