



THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.02.2022

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WEB COPY

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P. No. 16829 of 2021

C. Augustin Jebaraj

.. Petitioner

Versus

1. The Reserve Bank of India

Fort Glacis, P.B.No. 40,
16, Rajaji Salai,
Chennai - 600001.

(R1-Dismissed vide order dated 12.08.2021)

2. HDB Financial Services Ltd

Rep by its Authorised Manager,
No. 68/2, Loyal Towers, 4th Floor,
Greens Road,
Chennai - 600006.

.. Respondents

PRAYER: Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus, directing the 1st respondent to dispose off petitioner's representation dated 22.07.2021 for return of document from the second respondent to the petitioner, in respect of the property at 4/21, Swornambigai Nagar, Virugambakkam, Chennai - 600092 given as security in respect of the loan transaction between the 2nd respondent with the petitioner.

For Petitioner	:	Mr. A. Muruganandam
For Respondent 2	:	Mr. Kaviya Nathan
		For M/s. Nathan And Associates
R1	:	against dismissed as per order dated-12.08.2021

O R D E R

The petitioner has filed this writ petition seeking to issue a Writ of Mandamus directing the 1st respondent to dispose off petitioner's representation dated 22.07.2021 for return of document from the second respondent to the petitioner, in respect of the property at 4/21, Swornambigai Nagar, Virugambakkam, Chennai - 600092 given as security in respect of the loan transaction between the 2nd respondent with the petitioner.

2. The case of the petitioner is that, the petitioner had obtained a business loan from the second respondent finance company as per his Loan Account No. 34253 as per loan agreement between the petitioner and the second respondent dated 29.09.2011. The second respondent initiated Arbitral proceedings against the petitioner at Mumbai by way of altering



the jurisdiction due to some financial crunch. Then a Arbitration proceedings were conducted and a award was obtained on 28.01.2017 in ARB No.1556/2016.

3. Further, the petitioner states that the 2nd respondent illegally initiated E.P proceedings against him by producing Arbitral award before the IXth Assistant City Civil Court, Chennai, in E.P.No.2205 of 2017. Objecting the same, thereafter the petitioner has filled E.A.No.1 of 2020 under Section 21 Rule 29 read with Section 151 Civil Procedure Code before the IXth Assistant City Civil Court and the Court ordered notice on 20.03.2020 in E.A.No.1 of 2020. Thereafter, the petitioner submitted a representation to Director Ministry of Corporate Affairs and RBI about the fraudulent activities of the 2nd respondent and the petitioner filed a writ petition in W.P.No.5420 of 2021 before the High Court for conducting enquiry against the 2nd respondent. Aggrieved by the same, this Writ Petition is filed seeking writ of Mandamus.

4. The learned counsel appearing on behalf of the second respondent objected the said contentions made by the petitioner by stating that the petitioner has not obtained a loan from 2nd respondent Bank for the development of his business by creating a mortgage upon the property bearing Door No.104, Virugambakam Village, Sornambigai Nagar, Bearing survey No.70/2 measuring 3083 Sq.ft., situated at South Chennai Register office, Virugambakam SRO, Chennai Jilla, Guindy-Mambalam Taluk and executed a mortgage deed registered as Doc.No.3963/1992 in favour of the 2nd respondent. Further, the learned counsel for the second respondent made a submission that the 2nd respondent has not altered any jurisdiction clause, at this juncture it is pertinent to point out that the petitioner willfully defaulted in paying the EMI and clause 29 of the loan agreement entered by the petitioner.

5. The learned counsel for the second respondent submitted that the second respondent is not entered into compromise between the second respondent, for which, the second respondent filed an execution petition before the City Civil Court, Chennai in E.A.No.31136 of 2021 and the same is pending. When the E.A. is pending, the petitioner filed the present petition is not sustainable. Hence, the present writ petition is liable to be dismissed.

6. Heard the learned counsel for the Petitioner and the learned counsel for the Respondent and perused the materials placed on record.

7. The facts of the case are not in dispute. Admittedly, the second respondent initiated the arbitral proceeding the award passed on 28.01.2017. Challenging the same, the second respondent has filed the execution petition before the City Civil Court in E.P.No.2205/2017 and the same E.P. Was terminated at the instigation of the petitioner and the second respondent. Even after termination of the said E.P., the second respondent has not returned the documents in favour of the



petitioner. However, the learned counsel submitted that the petitioner has not complied with the conditions as per the compromise memo between the petitioner and the second respondent. Thereby, the second respondent filed E.A.No.31136 of 2021 and the same is pending before the City Civil Court, Chennai. The learned counsel for the petitioner objected the contention made by the second respondent and he further submitted that the petitioner has not received any notice with regard to the E.A.

8. In view of the above discussion, this Court cannot issue any direction to the second respondent to return the documents to the petitioner when the proceedings is pending between them.

9. Considering the facts and circumstances of the case, this Court passes the following order:

''(i) The petitioner is directed to agitate the issue before Court below where E.A. is pending;

(ii) The trial Court shall pass orders after affording opportunity to the petitioner as expeditiously as possible; and

(iii) If E.A. is not numbered, the second respondent is directed to return the subject documents to the petitioner within a period of four weeks from the date of receipt of a copy of this order.''

10. With the above direction, the writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

rli
To

1.The Authorised Manager,
HDB Financial Services Ltd
No. 68/2, Loyal Towers, 4th Floor,
Greams Road,
Chennai - 600006.

+1 cc to Mr.A.Muruganandam, Advocate Sr.NO. 7076

W.P. No. 16829 of 2021

kg (CO)
A.SK (07/03/2022)