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W.P.No.33603 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2022

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.33603 of 2017

Manapuram Asset Finance Ltd,
Rep. by its Authorized Officer Mr.M.Ramesh
No.111/105, Opposite Nattika firka Co-operative Rural Bank,
Near Chanthapadi Junction, Valappad P.O,
Thrissur-680 567. ...Petitioners

Vs.

1. The Sub Registrar,
Sub Registrar Office,
Vadavalli, Coimbatore-46.
2. The Inspector General of Registration,
No.100, Santhome High Road,
Mylapore, Chennai-600 028.
3. P.Gopalan
4. S.Karthik
5. R.Ponnusamy
6. P.Hemalatha
7. K.V.Mohanakrishnan

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records culminating in the order of 1st respondent vide his letter No.318/2017 dated 28.08.2017 and quash the same. Further, directing the 1st respondent to implement the



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order of 7th respondent herein dated 11.08.2017 and make necessary endorsements in concerned registers

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For Petitioners : Ms.R.Meenakshi

For Respondents : Mr.E.Vijay Anand, AGP, for R1 & R2

ORDER

The petitioner has filed this Writ petition for quashment of the proceedings of the 1st respondent dated 28.08.2017, refusing to implement the order of the 7th respondent dated 11.08.2017 and for a consequential direction to implement the same.

2. The case of the petitioner is that the petitioner/company is a Public Limited Company engaged in Financial business. The 3rd respondent herein entered into a loan agreement with the petitioner/company for a sum of Rs.30,00,000/- and the respondents 4 to 6 herein stood as guarantors for the above said loan availed by the 3rd respondent. The 3rd respondent was irregular in repaying the loan amount and despite repeated reminders and notices sent by the petitioner/company, the 3rd respondent did not come forward to repay the loan amount. Accordingly, the petitioner/company initiated arbitration proceedings under section 7 of the Arbitration and



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Conciliation Act, 1996 before the 7th respondent, in C.P.No.25 of 2017, seeking to pass an Award directing the respondents therein to pay a sum of 31,65,825/- with an interest at the rate of 36% per annum from 17.01.2017 till the date of realization. While so, the petitioner/company came to know that the 4th respondent herein, who stood as one of the guarantor for the loan availed by the 3rd respondent, is trying to dispose of his property and immediately, the petitioner/company filed I.A.No.50/2017 in C.P.No.25/2017, for interim relief of attachment. Subsequently, a notice was issued to the respondents 3 to 6 herein, however, no one appeared before the 7th respondent/Arbitrator, accordingly, an ex-parte order was passed on 11.08.2017. Thereafter, the 7th respondent/Arbitrator issued a notice to the 1st respondent, intimating the attachment order and directed the 1st respondent to effect proper endorsements in the concerned registers. However, the 1st respondent, vide his reply letter bearing No.318/2017 dated 28.08.2017, refused to implement the order of the 7th respondent/Arbitrator dated 11.08.2017, on the ground that the Sub-Registrar can attach the properties only when endorsements orders are issued through the Court. Challenging the same, the present Writ petition is filed.



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3. Learned counsel for the petitioner submitted that, since the 3rd respondent defaulted in repaying the loan, which was availed from the petitioner/company, the petitioner/company initiated arbitration proceedings against the respondents 3 to 6 to recover the sum of Rs.31,65,825/- along with accrued interest till the date of realization. Further, as the property mortgaged was not sufficient to recover the loan amount and as the 4th respondent who stood as one of the guarantor, tried to sell his property, the petitioner/company filed I.A.No.50/2017 and though, notice was served on the respondents 3 to 6, none appeared on behalf of the respondents 3 to 6 and accordingly an ex-parte order was passed on 11.08.2017. Thereafter, the 7th respondent/Arbitrator has rightly sent a notice to the 1st respondent intimating the attachment of the 4th respondent's property comprised in S.Nos.92, 92/4, 92/4 Part measuring an extent of 141 sq. ft. dry land situated at Punnimadai Village, as the said property comes within the jurisdiction of the 1st respondent. If the 4th respondent sells the said property, it will adversely affect the interest of the petitioner/company and will result in serious infringement of the petitioner/company's right to recover the loan amount. Hence, the impugned order passed by the 1st respondent, refusing



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to entertain and implement the attachment order dated 11.08.2017 passed by the 7th respondent/Arbitrator, as against the 4th respondent, is not sustainable. Accordingly, he prayed for appropriate orders.

4. Learned Additional Government Pleader appearing for the official respondents submitted that, even if the petitioner/company had obtained attachment order from the 7th respondent/Arbitrator, the remedy available to the petitioner/company is to approach the competent civil court by way of filing execution proceedings. Without filing execution proceedings, sending communication to the Sub-Registrar, not to entertain the document from the 4th respondent is not sustainable. Hence, he prayed for dismissal of this Writ petition.

5. Though notice was served on private respondents, however, no one appeared on behalf of the private respondents. Considering the period of pendency of this Writ petition, this Court is inclined to pass the following order based on the materials available on record.

6. Though the petitioner/company sought remedy against the 4th respondent, however, it is pertinent to note that no notice was served on the



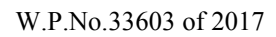
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private respondents, before passing the said attachment order dated 11.08.2017 passed by the 7th respondent, who is an advocate who acted as an Arbitrator and the same was passed ex-parte without hearing the aggrieved persons. Further, the petitioner/company did not establish before this Court that notice was served on the 4th respondent and the attachment order was passed after hearing the 4th respondent.

7. Further, as rightly pointed out by the Additional Government Pleader, the remedy available for the petitioner/company is to approach the competent civil forum by way of filing appropriate execution proceedings and without doing the same, directing the Sub Registrar to implement the above said attachment order is not sustainable. Hence, this Court is of the view that, no affirmative direction can be passed in favour of the petitioner/company and the present impugned order passed by the 1st respondent cannot be found fault with.

8. For the reasons aforesaid, this Writ petition is dismissed. No costs.

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Speaking Order : Yes/ No
Index : Yes/ No

1. The Inspector General of Registration,
O/o. The Inspector General of Registration,
No.100, Santhome High Road,
Foreshore Estate, Chennai-600 028.
2. The District Registrar,
O/o. The District Registrar,
Krishnagiri District, Krishnagiri.
3. The Sub Registrar,
O/o. The Sub-Registrar,
Soolagiri, Krishnagiri District.



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M.DHANDAPANI, J.

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