



WP(MD)No.12910 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 18.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)No.12910 of 2013

and

WMP(MD)Nos.1 of 2013 and 1 of 2014

and

Cont.P(MD)No.1566 of 2014

S.K.J.Satheesh

... Petitioner

Vs

1.The Principal Chief Engineer,
Department of Banking Supervision,
Reserve Bank of India,
World Trade Centre,
Cuffe Parade, Mumbai - 5.

2.The Chief Executive.
L&T Finance Limited,
L&T House, N.M.Marg,
Ballard Estate, Mumbai -1.

3.The Branch Head
L&T Finance Limited,
No.489 1st Floor,
Vinayaga Nagar,
K.K.Nagar, Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus forbearing the 2nd and 3rd respondents from taking possession of the agriculture machinery bearing chasis number IN10393 of the petitioner without due process



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of law and consequently direct the second and third respondents to reschedule the loan of the petitioner.

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For Petitioner : Mr.T.Selvan

For Respondent : Mr.Anand C.Rajesh

Nos.2 and 3

For Respondent : No appearance

No.1

CONT P(MD)No.1566 of 2014

S.K.J.Satheesh

... Petitioner

Vs

1.Dinanath Dubhashi
The Chief Executive.
L&T Finance Limited,
L&T House, N.M.Marg,
Ballard Estate, Mumbai -1.

2.N.Saravanan,
The Branch Head
L&T Finance Limited,
No.489 1st Floor,
Vinayaga Nagar,
K.K.Nagar, Madurai.

... Respondents

PRAYER: Contempt Petition filed under Section 11 of the contempt of Courts Act, 1971 to punish the respondents for their deliberate and willful disobedience of the order of this Court made in MP(MD)No.1 of 2013 in WP(MD)No.12910 of 2013 dated 02.08.2013.

For Petitioner : Mr.T.Selvan

For Respondents : Mr.Anand C.Rajesh



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COMMON ORDER

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The petitioner has filed the writ petition seeking a writ of mandamus forbearing the second and third respondents from taking possession of the agricultural machinery bearing chasis number IN10393 of the petitioner without due process of law and for consequential direction to direct second and third respondents to reschedule the loan of the petitioner. The contempt petition is filed to punish the respondents for their deliberate and willful disobedience of the order of this Court made in MP(MD)No.1 of 2013 in WP(MD)No.12910 of 2013 dated 02.08.2013.

2.Both the contempt petition and the writ petition are taken up for hearing and disposed of by this common order.

3.The learned Counsel for the petitioner submits that the petitioner borrowed a sum of Rs.14,12,495/- in the third respondent bank for the purchase of agriculture machine from Kubota Agriculture Machinery India DC-68 G, Chasis No.IN10393 by way of loan cum hypothecation in hypothecation No.OKG148043R12000453028. The repayment of



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installments are 12 and the installment is once in a three months. The petitioner has paid three installments and only January and April 2014 installments have to be paid. While so, the second and third respondents sent a legal notice dated 06.06.2013 calling upon the petitioner to pay the due amount of Rs.3,75,000/- or otherwise within stipulated time, vehicle would be taken possession.

4.The petitioner has sent a representation seeking time to pay the dues and requested them to reschedule the loan amount. The petitioner to show his bonafide has also paid a sum of Rs.75,000/- on 03.07.2013. While so, on 22.07.2013 the second and third respondents attempted to take possession of the vehicle and therefore, he filed the above writ petition.

5.The learned Counsel for the petitioner further submits that the cost of the vehicle is R.21,75,000/-; loan amount is Rs.14,12,945/-; Down payment is Rs.7,62,505/-; Upto October 2013, the petitioner paid five installments i.e., a sum of Rs.7,90,000/-; Total amount paid by the petitioner is Rs.15,52,505/-.



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6.This Court while entertaining this writ petition granted an order of interim injunction in MP(MD)No.1 of 2013 in WP(MD)No.12910 of 2013 dated 02.08.2013 restraining respondents 2 and 3 from taking possession of the agriculture machinery bearing chasis number IN10393, pending disposal of the writ petition. This order dated 02.08.2013 was made ready on 07.08.2013. While so, the second and third respondents are said to have taken possession of the petitioner's machinery on 26.02.2014 with the help of goondas and therefore, the petitioner has also filed a contempt petition in Cont.P(MD)No.1566 of 2014 before this Court. This Court has issued notice in the contempt petition.

7.The learned Counsel for respondents submits that the petitioner has approached the second and third respondents and obtained loan of Rs.14,12,495/- for purchasing Kubota Agriculture Machinery India DC-68 (Harvester Machine) on loan cum hypothecation agreement. As per the agreement the petitioner agreed to repay the said loan with interest aggregating to Rs.18,96,000/- in 12 installments as per the repayment schedule. The repayment schedule commences from



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10.04.2012 and the petitioner has to pay a sum of Rs. 1,58,000/- in each installment. Under the terms and conditions of the said agreement the petitioner has agreed to pay additional interest at the rate of 36% for delayed payments. Further the respondents 1 and 2 are entitled to repossess the vehicle in the event of default in payment of schedule installments. The petitioner has failed to pay the installment falls due on January and April 2013 the respondent 2 and 3 have issued notice dated 06.06.2013 calling upon the petitioner to pay the then due amount Rs.3,75,932/-.

8.The learned Counsel for the respondents submits that the transaction between the petitioner and the second and third respondents are purely based on the contract and as per clause 12(1) of the terms of the loan cum hypothecation, the parties can resolve their disputes only through arbitration and this writ petition is not maintainable. The respondents have also denied that they have taken possession of the machinery and the petitioner only handed over the machinery for his default in repayment of the loan installment. They claim that they have also



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filed a vacate stay petition as early as in the month of December 2013.

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9. Heard the learned Counsel on either side and perused the materials placed on record.

10. The petitioner has availed loan from the second and third respondents on 11.01.2012 to the tune of Rs.14,12,495/- on loan cum hypothecation agreement. As per the terms of the said loan agreement, if any dispute with regard to the transaction as per clause 12(1) of the loan agreement, the parties have to resolve their dispute only through arbitration. Admittedly the petitioner has committed default in payment of the installment for the month of January and April 2013. As per the loan cum hypothecation agreement, the respondents are having right to repossess the vehicle, if the borrower fails to repay the loan amount.

11. Though this Court has entertained this writ petition at the stage of admission and granted interim order of injunction on 02.08.2013, the respondents have



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filed a vacate stay application in the year 2013 itself and the same is pending. Whether the respondents have taken possession of the vehicle illegally or whether the petitioner has voluntarily handed over the vehicle are disputed facts and it cannot be decided by this Court. Since the issue between the petitioner and the respondents are based on a contract and there is already a clause for arbitration, this Court is not inclined to pass any further orders. Accordingly, this writ petition is disposed of with liberty to the petitioner to work out his remedy in the manner known to law. No costs. Consequently connected miscellaneous petitions stand closed.

12.In view of the order passed in this writ petition, the contempt petition stands closed.

18.11.2022

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To

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B. PUGALENDHI, J.

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