BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE PARESH UPADHYAY
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No. 7340 of 2022

and W.M.P(MD) No.5569 of 2022

Rajagopal,
S/o.Thangappan Asari,
rep. through his power of attorney and wife
Subharani,
W/o.Rajagopal
(Vide Special Power of Attorney deed dated 01.02.2020)
No.8-45B1, Subramaniam New Street,
Eraniel Village, Neyyor Post,
Kanyakumari District
now residing at
Maruthibhavan,
Melamadaveethi, Panakudi,
Tirunelveli District. .. Petitioner

Vs

1.The Authorised Officer,
Tamilnad Mercantile Bank,
No.17/W 21, Main Road, Colachel,
Kanyakumari District.

2. The Branch Manager,
Tamilnad Mercantile Bank,
No.17/W 21, Main Road, Colachel,
Kanyakumari District.

3. Mr.Dharmaraj,
The Then Branch Manager,
Tamilnad Mercantile Bank,
No.17/W 21, Main Road, Colachel,
Kanyakumari District.

4. Mr.Bharanitharan,
The Branch Manager,
Tamilnad Mercantile Bank,
No.17/W 21, Main Road, Colachel,

Kanyakumari District.

5. Jeyaprakash .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari calling for the records relating to the impugned sale notice dated 11.03.2022 passed by the first respondent in the petitioner's husband property at R.Sy.No.159/8 at Subramaniam New Street, Eraniel Village, Neyyor Post, Kanyakumari District and the residential building therein and quash the same as illegal.

For Petitioner : Mr.T.Arul

For Respondents : Mr.N.Dilip Kumar for R1 to R4

ORDER

[Made by R.VIJAYAKUMAR, J.]

1. The present writ petition has been filed challenging the sale notice issued by the respondent bank on 11.03.2022, fixing the date of sale on 20 April 2022.

2. The sale notice is being challenged mainly on the ground that one of the petitioner's relative viz., the fifth respondent herein has cheated the writ petitioner and the memorandum of deposit of title deeds was created behind the back of the writ petitioner. According to the writ petitioner, as per the power of attorney given in favour of the fifth respondent, loan has to be obtained in the name of the petitioner, however, behind the back of the writ petitioner, the loan has been obtained in the name of the relative and they have forged the signatures of the writ petitioner during the registration of memorandum of deposit of title deeds. Mainly on these allegations, the present writ petition has been filed challenging the sale notice.

3. Paragraph 10 and 11 of the writ affidavit are extracted hereunder:-

> "10. I humbly submit that the above said loan amount was credited to the account of Jeiyashivaani and she transferred an amount of Rs.19,00,000/- in my Federal Bank account on 13.07.2017. I state that my husband's niece owes substantial amount to my husband as all the money which my husband is earning in Saudi Arabia is rooted through his sister namely Nageswari and the said Nageswari is still residing in one of the impugned buildings standing in the name of my

husband.

11. I submit that myself and may husband were under the impression that only 19,00,000/- taken as loan amount in my husband's name but the 5th respondent and his wife behind our back had taken Rs.40,00,000/- as loan for their business development fraudulently in collusion with the bank officials and the said loan was taken in the name and style of Jeiyashivaani, Proprietor of M/s.Jeyam Textile and not in my husband's name or on his behalf as terms in the power of attorney deed dated 05.05.2017."

4. A reading of the above said paragraphs indicate that the petitioner was part and parcel of the loan transaction with the respondent bank. The petitioner has received a sum of Rs.19,00,000/- (Rupees Nineteen Lakhs only) from the loan amount. The petitioner has specifically admitted that the said loan amount was credited originally to the account of his relative and thereafter it was transferred to his account. This submission would clearly indicate that the petitioner was very well aware of the fact that the loan was sanctioned only in the name of her relative and thereafter a sum of Rs.19,00,000/- was transferred from the said account of her relative.

5. Admittedly, the petitioner has already filed O.S.No.3 of 2021 before the District Court, Nagercoil, seeking relief of declaration to cancel the memorandum of deposit of title deeds and for return of the parent documents. He has further prayed for permanent injunction as against the respondent bank not to proceed under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

6. The above narrated facts will clearly indicate that the petitioner did not approach this Court with clean hands. The petitioner is also a beneficiary of the loan amount sanctioned by the respondent bank. The petitioner is attempting to wriggle out of the liability arising out of the loan transaction by camouflaging as if the petitioner is not even aware of the sanction of the loan in the name of his relative.

7. Though the petitioner has contended that they have challenged the possession notice dated 03.08.2021, so far the said appeal has not yet been numbered. Considering the above said facts, we are of the view that the writ petitioner has not approached the Court with clean hands and there seems to be some dispute between the petitioner and her relative with regard to certain financial transactions in which the bank is not concerned. Though the petitioner has received a sum of Rs.19,00,000/- out of the loan account, they are not ready to deposit any amount before the bank

for the past five years. Considering the above, we find no merits in the writ petition.

8. The writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Sj/14

+1 CC to M/s.N. DILIPKUMAR, Advocate (SR-19901[F] dated 20/04/2022)

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19.04.2022

SG(CO)
KB(26.04.2022) 4P 2C