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WP No.1306 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12-06-2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP No.1306 of 2023

K.Purushothaman

... Petitioner

Vs.

1.The Registrar,
Sub Registrars Office,
Katpadi,
Vellore-632 007.

2.State Bank of India,
Vellore, Town Branch
Represented by its Chief Manager,
Vellore-4.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the first respondent to remove the entry in Encumbrance Certificate of Attachment of the petitioner's property made in IA No.417 of 2005 in OA No.104 of 2005 by the learned Debts Recovery Tribunal-I, Chennai on 26.05.2006 through Document No.6 of 2006.



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For Petitioner	: Mr.S.Arunkumar
For Respondent-1	: Mr.N.Naveenkumar, Government Advocate.
For Respondent-2	: Mr.M.L.Ganesh

ORDER

The relief sought for in the present writ petition is to direct the first respondent to remove the entry in the Encumbrance Certificate of Attachment of the petitioner's property made in IA No.417 of 2005 in OA No.104 of 2005 by the Debts Recovery Tribunal-I, Chennai on 26.05.2006 through Document No.6 of 2006.

2. The learned counsel for the petitioner made a submission that the second respondent-State Bank of India filed Original Application before the Debts Recovery Tribunal III, Chennai in OA No.190 of 2007 for recovery of a sum of Rs.96,69,469.50 together with interest at the rate of 21% per annum from the date of filing of the suit dated 03.06.2023 till the



date of realisation.

3. The Debts Recovery Tribunal passed an interim order of attachment, attaching the property belonging to the petitioner.

4. The learned counsel for the petitioner mainly contended that the petitioner filed IA No.320 of 2008 to obtain an order of attachment and the Debts Recovery Tribunal allowed the said Interlocutory Application on 31.05.2010 in OA No.190 of 2007. Thus the attachment order was set aside and the claim of the petitioner was allowed.

5. It is brought to the notice of this Court that the Original Application itself was closed on the ground that the Debts Recovery Tribunal has no jurisdiction. Pursuant to the order passed by the Debts Recovery Tribunal, the second respondent-Bank instituted the Civil Suit before the I Additional District and Sessions Judge Court, Vellore in OS No.4 of 2012.

6. The learned counsel appearing on behalf of the second



respondent-State Bank of India mainly contended that the petitioner was an employee and committed fraud by misappropriating the second respondent-Bank funds. Appropriate actions were initiated and initially, the second respondent-Bank filed a suit and the Civil Court directed the second respondent-Bank to approach the Debts Recovery Tribunal. Since it is a fraud on the part of the second respondent-Bank, the second respondent-Bank approached the Tribunal and the Tribunal passed an order of attachment, based on that entries are made in the Encumbrance Certificate at the instance of the Registering Authorities under the Registration Act.

7. The second respondent-Bank has to recover the amount by dropping all further actions in respect of the fraud committed by the petitioner. Therefore, the present writ petition is to be rejected.

8. This Court is of the considered opinion that the Encumbrance Certificate and the attachment were made by the Registering Authority under the provisions of the Registration Act, based on the order of attachment passed by the Debts Recovery Tribunal, Chennai in OA No.190 of 2007.



9. When the Debts Recovery Tribunal allowed the Interlocutory Application filed by the writ petitioner in IA No.4 of 2012 and rejected the order of attachment, the entries in the Encumbrance Certificate cannot be sustained by the second respondent-Bank. Subsequently, they have instituted the civil suit against the petitioner. Therefore, all further actions are to be initiated in the manner known to law by the second respondent-Bank.

10. As far as the Encumbrance Certificate of attachment of the petitioner's property made by the first respondent-Registering Authority is concerned, the same cannot be sustained.

11. In view of the fact that the order of attachment was rejected by the Debts Recovery Tribunal and consequently an order of attachment was revoked. Since the order of attachment has already been revoked by the Debts Recovery Tribunal, the entries in the Encumbrance Certificate cannot be maintained by the Authorities in this regard.



12. Accordingly, the first respondent is directed to remove the entries in the Encumbrance Certificate of attachment of the petitioner's property made in IA No.417 of 2005 in OA No.104 of 2005 (renumbered as OA No.190 of 2007) vide document No.6 of 2006. The said exercise is directed to be done by the first respondent, within a period of two weeks from the date of receipt of a copy of this order. The removal of entries in the Encumbrance Certificate would not be an impediment for the second respondent-Bank to continue all further actions.

13. With the above directions, the writ petition stands allowed.
However, there shall be no order as to costs.

12-06-2023

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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To

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S.M.SUBRAMANIAM, J.

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