



WEB COPY



W.A.No.468 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2023

CORAM :

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

AND

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.A.No.468 of 2020

1. The Managing Director
Tamil Nadu Industrial Investment Corporation
No.692, Anna Salai, Nandanam
Chennai
 2. The Branch Manager
Tamil Nadu Industrial Investment Corporation
DDDC Building Upstairs
Pennagaram Road
Dharmapuri 636 702
- .. Appellants

v.

1. M/s VCAN Active Carbon Private Limited
rep.by its Director, Kanniah Vikram Dixit
Plot No.21, Door No.6, Vaishnavi Apartments
3rd Cross Street, Shastri Nagar
Adyar, Chennai 600 020
 2. J.S.Rajkumar
 3. J.Arunpadmanaban
- .. Respondents



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Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 22.11.2019 made in W.P.No.29773 of 2019.

For Appellants :: Mr.K.Magesh

For Respondents :: No appearance for R1 & R3
R2-given up

JUDGMENT

(Judgment of the Court was made by P.B.BALAJI,J.)

The respondents 1 & 2 in the Writ Petition No.29773 of 2019 have preferred the present appeal, as against the order of the writ Court dated 22.11.2019.

2. The writ petitioner has prayed for issuance of a mandamus directing the respondents 1 and 2 to allow the petitioner company to remove the machineries, plants and generators and other materials which are not hypothecated to respondents 1 and 2 and which are not listed in the auction notice dated 10.11.2018 from the factory premises M/S VCAN Active Carbon Private Limited at Plot No.116, Sipcot, Parandapalli Village, Pochampalli, Krishnagiri District and to refund a sum of Rs.75,17,718/- to



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the petitioner company and the surety documents pertaining to the Term Loan dated 02.02.2013 and working capital loan dated 05.03.2014. The writ Court, after hearing the parties, directed that certain items of machineries were not part of the initial mortgage in favour of the appellants herein and therefore directed those specific items to be handed over to the writ petitioner and the remaining items of machineries to be handed over to the auction purchaser. However, insofar as the documents which were sought to be returned as prayed for by the writ petitioner, the writ Court directed that the documents be handed over to the petitioner company. This portion of the order is being challenged in the present writ appeal, on the ground that the appellants cannot be directed to handover the documents given by the surety, since the entire loan amount has not been settled and they are entitled to proceed against the writ petitioner, the original borrower, for recovering the balance amount of dues.

3. The first respondent/writ petitioner has been served with notice. However, they have not chosen to appear either in person or through a counsel. The second respondent-auction purchaser has been given up by the



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appellants.

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4. We have heard Mr.K.Magesh, learned counsel appearing for the appellants. We have also perused the records and also the order of the writ Court. It is also clear from the grounds of appeal that the appellants only seek for a clarification with regard to the portion of the impugned order directing them to return the documents to the writ petitioner, as an amount of Rs.14,63,034/- and additional due of Rs.69,258/- is still to be recovered by the appellant Corporation from the writ petitioner and the surety. The said contention of the learned counsel for the appellants deserves consideration, since the property has already been auctioned and a portion of the entire dues to the appellant Corporation has been recovered. However, when there is substantial amount that is still to be recovered, the right of the appellants cannot be scuttled by directing the handover of documents of the surety to the writ petitioner. Thus, we find merit in the writ appeal and accordingly clarify the order of the writ Court that so far as the direction to the appellants to handover the documents to the petitioner company is concerned, the said portion of the order shall not pertain to the



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documents of the surety retained by the appellants, for proceeding against the same for recovering the balance amount due to the appellants. With this clarification, the order of the writ Court is partially modified and the writ appeal stands partly allowed. Consequently, C.M.P.No.7200 of 2020 is closed. No order as to costs.

(D.K.K.,J.) (P.B.B,J.)
19.09.2023

Index : yes/no
Neutral citation : yes/no

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