E.A.Nos.317 & 3080 of 2024
in E.P.DR.No.159940 of 2024

RESERVED ON 28.08.2024	PRONOUNCED ON 03.10.2024

K.KUMARESH BABU,J.

The Application in E.A.No.317 of 2024 has been filed to direct the respondent to cooperate with the applicant to re-morgage the Pallikaranai property and Kovilambakkam property by producing the original documents before the concerned Sub-Registrar Office and to permit the applicant to make the entire payment of Rs.2,65,00,000/- (+ interest at 17% p.a. from 1st May 2023 till 31st December 2023) to the respondent as per the Arbitral Award dated 1st March 2023 passed on the basis of the settlement agreement dated 7th February 2023, pending disposal of the above Execution Petition.

2. The Application in E.A.No.3080 of 2024 has been filed to direct the respondent to cooperate for the sale of the Scheduled property by releasing its morgage as per the Arbitral Award dated 01.03.2024 and to permit the Applicant/ Petitioner to deposit the first tranche amount of Rs.1,40,00,000/- (Rupees One Crore Forty Lakhs) to this Hon'ble Court.

3. Heard Mr.Antony R. Julian, learned counsel for the applicant, Mr.S.Diwakar, learned counsel appearing on behalf of the sole respondent in both the applications.

4. To consider the said mandatory reliefs in an applications for execution, for grant of the said reliefs, it could be useful to analyse the facts which led to these applications.

5. The decree under execution is based upon a compromise/ consent Award, that had been arrived between the parties. The consent Award came to be passed on 01.03.2023, based upon the settlement Agreement that had been entered upon by the parties. The parties had agreed upon to settle their disputes, after discussions based upon the settlement agreement that had been entered between themselves in 07.02.2023. The said settlement forms part and parcel of the consent Award dated 01.03.2023. The said settlement also envisages that the parties had agreed to resolve their disputes and that the applicant had agreed to pay the respondent a sum of Rs.2,65,00,000/- in two

tranches i.e.,Rs 1,40,00,000/- or any higher amount but limited to Rs.2,65,00,000/-on or before 30.04.2023 and the balance amount on or before 31.12.2023 together with 17% interest on the balance amount. The balance amount as on 30.04.2023 was also agreed to be paid in multiple tranches. For the payment of first tranche amount, certain obligations were also envisaged under the Clause of said settlement. Clause 5 would refer to certain obligations by the parties before the final tranche of payment. It is not disputed that even the first tranche payment had not been made by the applicant as agreed by him. Clause 10 of the settlement envisages rights of the parties if there is a breach of the said settlement agreement.

6. An application had been taken originally seeking for a direction to the respondent to co-operate with the applicant to remortgage the properties both covered under Clauses 4 and 5 and to permit the applicant to pay the entire sum of Rs.2,65,00,000/- together with interest at the rate of 17% p.a. pursuant of the Arbitral Award on the allegations that the respondent herein had not extended his co operation. Thereafter, a subsequent application had been taken out by the applicant by

contending that he had found a prospective buyer for the property under Clause 4 of the settlement agreement and that if the respondent co operates to perform his part of his obligation, he would making the first tranche payment and since the respondent is not co-operating, he had taken out the present application. The same had been objected vehemently by the respondent by contending, if the first tranche payment had to be made on or before 30.04.2023 for which firstly an obligation had been mandated upon the applicant to call upon the respondent for a letter of no objection for sale of Pallikaranai property to a third party buyer. Once a third party buyer is identified by the applicant and the sale deed had been finalised, the respondent agrees to release the mortgage over the said property so as to enable the execution and registration of sale deed, but, however, subject to payment of the minimum first tranche amount namely Rs 1,40,00,000/-. He would further submit that it is also the case of the applicant that inspite of a request, the respondent had not granted no objection certificate and also not released the mortgage for the applicant to proceed further. Eventhough, he had identified a buyer as early as in the month of April 2024, the respondent had not co-operated and had not released the mortgage for him to make the first tranche payment. Having failed to honour his obligation, the respondent cannot invoke Clause 10 of the agreement to contend that there is a breach of agreement at the hands of the applicant. He would vehemently contend that he is willing to comply with the obligations under the settlement, provided, the respondent performs his part of obligations. He would submit that he had identified a new buyer who is willing to purchase the property. But, however since, the respondent had not cooperated, he had come out with these present applications.

7. On the other hand, the learned counsel for the respondent would submit that as per Clause 4, the applicant had not even requested the respondent for grant of no objection certificate. It is true that the applicant had identified a buyer and had negotiations with the buyer's Bank. Eventhough, the respondent was willing to grant a no objection certificate, the the applicant had not made any attempt to request for no objection certificate. Since the terms of the sale between the applicant and the buyer along with the buyer's Bank did not fructify and hence, the said deal could not be proceeded with. Therefore, on

30.04.2023, the applicant had failed to pay the respondent the first tranche payment and also failed to take any steps to call upon the respondent to give no objection certificate.

8. In that context, he would submit that automatically Clause 10 of the Settlement Agreement kicks in and the respondent was entitled to claim the total due amount of Rs.3,29,77,128/- which was his claim as on 31.12.2020 together with interest at 18% interest from that date to till the payment. Therefore, he would submit that in view of the breach committed by the applicant, the E.P. as well as these applications are all not maintainable and prays this Court to dismiss these applications.

9. I have considered the rival submissions made by the learned counsel appearing on either side and persued the materials available on record.

10. It is admitted by both the parties that a dispute that had been arisen between themselves had been settled among themselves and a consent Award had been passed. It is also

admitted that the said dispute had been settled between the parties on full and final payment of a sum of Rs.2,65,00,000 by the applicant to the respondent. It is also admitted that the said amount would be paid in two tranches i.e., the first tranche of a sum of minimum Rs.1,40,00,000/- Crores on or before 30.04.2023 and the second tranche that is the amount which is balance after the first tranche together with interest at the rate of 17% p.a. on the balance amount on or before 30.12.2023. the obligations have also been set out in Clause 4 and 5 which had to be undertaken by the respective parties, for the first and final tranche payment as envisaged under Clause 1 of the said Agreement. A reading of the aforesaid Clause would indicate that at the request of the applicant, the respondent should issue a no objection certificate in respect of two properties.

11. It is the case is the respondent that there has been no request from the applicant for issue of no objection certificate. The said statement had not been seriously contested by the learned counsel for the applicant, nor had produced any materials.

12. From a reading of the Clause 4 of the said Agreement, it could be seen that after the Arbitral Award, at the request of the applicant, the claimant should tender a letter of no objection for sale of Pallikarnai property to a third party. A format of the same had been annexed to the said Settlement Agreement. Once, a buyer had been identified by the applicant and the sale is finalised, the respondent had agreed to release the mortgage over the property at Pallikaranai to enable the execution and registration of the sale deed. But the same was subject to payment of minimum first tranche amount. A format for release of mortgage has also been annexed in annexure-IV. Even though it is disputed that there was no claim for no objection certificate from the applicant, the conduct of the respondent as admitted by himself and the mail communications that were placed before this Court would indicate that there has been an implied no objection or consent for the sale of the property by the respondent. The mail communications also indicates that the applicant had identified a buyer and talks were in progress with the buyer's Bank for the payment.

13. Clause 4 as analysed above indicates that on

finalisation of the sale, the respondent had to execute a release of mortgage. But, however, on payment of the tranche amount. The mails do not indicate that there was no attempt for payment of the first tranche amount for the respondent to comply, hisobligation namely executor release of mortgage in respect of Pallikaranai property. Only on receipt of payment of money, the respondent was obligated to execute the release of mortgage.

14. The contention of the learned counsel for the applicant is that since the Bank of the buyer was not accepting to both the process of execution, the release deed and also the sale deed in favour of the new buyer, the payment was not made. Therefore, the request of the applicant now is to first direct the respondent to release the mortgage deed since the buyer had only envinced interest in making the payment for sale consideration after the release of the mortgage. Therefore, the situation has arisen that the applicant was unable to raise money for the payment of first tranche on the date of execution of the release of the mortgage. Now, the applicant is trying to warn the respondent to release the mortgage for him to make the payment which will be after the sale deed to be executed by the applicant

in favour of the buyer. This is trying to put the cart before the horse.

15. In such an event, I am inclined to reject these applications. Further, Clause 10 of the Agreement specifically indicates that on breach on the terms of settlement, the settlement gets extinguished and the respondent is entitled for the entire claim amount from the applicant as per the claim. When that is the settlement that had been agreed between the parties. I am not inclined to entertain these applications as prayed for.

16. In fine, these applications are dismissed. Consequently, connected E.P.DR.No.159940 of 2024 is closed.

Gba

03.10.2024

Index : Yes/ No
Speaking/ Non-speaking order
Neutral Citation : Yes/ No

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