



W.P.No.14480 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No.14480 of 2024

and

W.M.P.Nos.15750 & 15751 of 2024

M/s.Pondicherry Oxy-Acetylene Private Limited,
Represented by its Managing Director,
V.S.Palanivel,
having previously office at
New No.72, Old No.38, First Floor,
Teachers Colony,
Indira Nagar,
Adyar, Chennai – 600 020.
Presently functioning at
New No.22, Old No.T-17/1, Coastal Beach Road,
Kalakshetra Colony,
Besant Nagar,
Chennai - 600 090.

... Petitioner

Vs.

1.M/s.Religare Finvest Limited,
having registered office at 2nd Floor,
Rajlok Building,
24, Nehru Place, South Delhi,
New Delhi – 110 019.



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having Branch Office at “BASCON IT PARK”
12th Floor, New No.10/2, Old No.56L,
Venkat Narayana Road,
Thiyagaraya Nagar,
Chennai – 600 017.

2.India Resurgence ARC Private Limited,
Having registered office at
3rd Floor, Unit 304, Piramal Tower,
Peninsula Corporate Park,
Lower Parel,
Mumbai - 400 013.

3.The Sub-Registrar,
5/5, SIDCO Nagar,
Chennai – 600 049.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to documents No.3330 of 2020 dated 05.11.2019 registered on 18.09.2020 on the file of the 3rd respondent and quash the same as illegal in relation to petitioner's property situated at No.97/7, Pondy-Villupuram Road, Thirubhuvanai, Pondicherry- 605 107, and consequently, direct the respondents 1 and 2 to restore the physical possession of the property No.97/7, Pondy-Villupuram Road, Thirubhuvanai, Pondicherry- 605 107.

For Petitioner : Mr.C.T.Subramanian



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ORDER

(Order of the Court was made by **S.S. SUNDAR, J.**)

The above writ petition is filed challenging the Document No.3330 of 2020, dated 05.11.2019, registered on 18.09.2020 on the file of the 3rd respondent, as illegal, in relation to petitioner's property situated at No.97/7, Pondy-Villupuram Road, Thirubhuvanai, Pondicherry- 605 107, and consequently, to direct the respondents 1 and 2 to restore the physical possession of the property.

2. Brief facts that are necessary for the disposal of the writ petition are as follow :

The petitioner obtained a loan from the 1st respondent to the tune of Rs.3,05,00,000/- by mortgaging its property earlier by a document dated 28.04.2014. The property mortgaged was in Pondicherry and hence, the Mortgage Deed was registered in the Sub-Registrar's Office, Thirukannur, Pondicherry. After closing the mortgage and the mortgage being discharged by a registered document dated 16.06.2015, a fresh mortgage was created



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by the petitioner after getting a mortgage loan to the tune of Rs.3,96,50,000/- under a Deed of Mortgage dated 17.06.2015. The petitioner himself admit that due to demonetization and other adverse conditions, the petitioner was unable to repay the loan and the 1st respondent had issued notice under Section 13(2) of the SARFAESI Act on 11.02.2017. Though the petitioner admits that symbolic possession was also taken by the 1st respondent on 10.05.2017, it is the case of the petitioner that the petitioner was running the industry. The 1st respondent, the lending Bank, executed a Deed of Assignment in favour of the 2nd respondent and it appears that the petitioner was not aware of the Deed of Assignment as it did not receive any notice or information about the Deed of Assignment.

3.It is the case of the petitioner that the Advocate Commissioner visited the industry of petitioner on the basis of an order obtained from the Chief Judicial Magistrate, Pondicherry, under Section 14 of SARFAESI Act to take physical possession of the property. The petitioner also admit that the Advocate Commissioner executed the warrant with the cooperation of the petitioner. It is contended by the petitioner that the immovable properties



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were alone mortgaged, but the petitioner's movable assets like plant and machineries and other movables which are lying in the factory premises are not hypothecated. It is the case of the petitioner that the 2nd respondent obtained an invalid Deed of Assignment from the 1st respondent in respect of the immovable properties of the petitioner. Since Assignment Deed was registered in the Sub-Registrar's Office, Konnur at Chennai vide Document No.3330 of 2020 dated 05.11.2019, in respect of the property of the petitioner which is situated at Thirubhuvanai, Pondicherry, it is stated that the Assignment Deed would not convey any right in favour of the assignee. Since the registered Assignment Deed which is registered at Chennai is contrary to Section 28 of Registration Act, the petitioner's counsel contended that the Assignment Deed is void and cannot be enforced. The above writ petition is therefore, filed challenging the Assignment Deed dated 05.11.2019 with a consequential prayer to direct the respondents 1 and to restore physical possession of the mortgaged property to the petitioner on the following grounds :

- i. Respondents 1 and 2 have acted in a fraudulent and illegal manner without an authority.



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- ii. Since the Deed of Assignment was not properly registered under CERSAI Portal which is mandatory under Section 26(D) of SARFAESI Act, the respondents have no right to enforce any right.
- iii. The Deed of Assignment which is registered in Chennai is void insofar as the property situated at Pondicherry and the Assignment Deed is a clear case of fraud.
- iv. The registration of Assignment Deed without mentioning the description and location of the mortgaged property in the Assignment Deed is a fraud.

4.The second ground is not argued. Regarding grounds (iii) and (iv), the learned counsel for the petitioner relied upon a judgment of the Division Bench of this Court in the case of *M/s.Veena Textiles Limited v. The Authorised Office, IFCI Limited, Chennai and another [W.P.No.8761 of 2014, dated 01.08.2014]*. The judgment relied upon by the petitioner is in respect of the property which is within the State of Tamil Nadu, but registered at Calcutta. Therefore, the Division Bench held that the Assignment Deed executed at Calcutta in respect of a property situated in



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Tamil Nadu and got registered before the Registering Authority, Calcutta, is void, as such transaction is void in terms of Section 28 of the Registration Act. In this case, the Deed of Assignment was executed by the Finance Company in favour of the 2nd respondent which is registered as an Asset Reconstruction Company in terms of Section 3 of SARFAESI Act. Section 28 of Registration Act as amended by State of Tamil Nadu Act 19 of 1997 with effect from 27.03.1997 reads as follows :

***“28.Place for registering documents relating to land –
Save as in this Part otherwise provided --***

(a) every document mentioned in clauses (a), (b), (c), (d) and (e) of sub-section (1) and sub-section (2) of section 17 insofar as such document affects immovable property and in clauses (a), (b), (c) and (cc) of section 18, shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate in the State of Tamil Nadu; and

(b) any document registered outside the State of Tamil Nadu in contravention of the provisions of clause (a) shall be deemed to be null and void.”



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5.As per Section 28 of the Registration Act, every document in respect of immovable property shall be presented for registration in the office of Sub-Registrar where the whole or some portion of the property in respect of which the said document relates, is situated. In other words, if a property is to be registered in the Sub-Registrar's Office within the State of Tamil Nadu, whole or atleast some portion of the property to which the document relates, shall situate in Tamil Nadu. In the present case, the Deed of Assignment is in respect of several properties in different places of Tamil Nadu as well as properties in Puducherry. It is not disputed by the petitioner that several properties which are shown in the Schedule to the Deed of Conveyance lie within the jurisdiction of Sub-Registrar's Office, Konnur at Chennai. When a Deed which is required to be registered under Section 17 of the Act contains several properties lying within the jurisdiction of different Sub-Registrar's Offices in the State of Tamil Nadu, it is permissible that the said document can be registered in any Sub-Registrar's Office within whose jurisdiction atleast one property lie. On the facts admitted, this Court is unable to find any illegality or irregularity in the Deed of Assignment which



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is registered in Chennai which is in the State of Tamil Nadu. Section 28 cannot be interpreted in any other manner applying any principles of law relating to interpretation of Statute. Therefore, the judgment relied upon by the petitioner's counsel has no other application and this Court is unable to appreciate the ground raised by the petitioner by referring to Section 28 of the Registration Act. The 2nd respondent as an Asset Reconstruction Company steps into the shoes of the lending finance institution by virtue of the Deed of Assignment questioned before this Court. Since the Deed of Assignment is valid and cannot be challenged on the ground that the Deed of Assignment insofar as the petitioner's property is void, this Court finds no merit in the writ petition.

6. Accordingly, this writ petition is devoid of any merits and hence, dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(S.S.S.R., J.) (N.S., J.)
05.06.2024

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Internet : Yes
Index : Yes / No
Neutral Citation : Yes / No



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S.S. SUNDAR, J.
and
N. SENTHILKUMAR, J.

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To

The Sub-Registrar,
5/5, SIDCO Nagar,
Chennai – 600 049.

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