



Rev.Apl.W(MD)No.171 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 11.09.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Rev.Apl.W.(MD)No.171 of 2024

in

W.P.(MD)No.18201 of 2024

and

W.M.P.(MD)Nos.18239 and 18242 of 2024

S.Shivakumar

... Petitioner/3rd Respondent

Vs

1.M/s.Shrivari Cashew Pvt. Ltd,
Rep. by its Director,
Mr.Balavasanth,
SF.No.97/10A, Keelatheru,
Kurungulam West,
Thanjavur District.

... 1st Respondent/Petitioner

2.The Superintending Engineer,
TANGEDCO,
No.1, Valla Road,
Thanjavur District.

3.The Assistant Engineer (O & M)
TANGEDCO,
Thirukkanurpatti,
Thanjavur District.

... Respondents 2 & 3/
Respondents 1 & 2

Prayer: Review Application is filed under Order XLVII, Rules 1 and 2 of the Civil Procedure Code r/w. Section 114 of Civil Procedure Code, to



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review the order in W.P.(MD).No.18201 of 2024 dated 01.08.2024 on the file of this Court.

For Petitioner : Mr.G.Prabhu Rajadurai
For Respondents : Mr.A.Senthil Kumar for R1
Mr.S.Deenadhayan,
Standing Counsel for R2 & R3.

ORDER

Heard both sides.

2.The review applicant / S.Shivakumar is one of the partners of SS Impex. The said entity had availed loan from Indian Bank, Perambalur Branch. The borrower appears to have committed default. That led to institution of SARFAESI proceedings. The borrower filed SARFAESI Appeal No.543 of 2023 before the Debts Recovery Tribunal, Madurai. The subject matter of the said SARFAESI Appeal was the land and building mortgaged by the borrower as a secured asset. The land and building were sold on 08.11.2023 to one NSK Trading Private Limited. Shrivari Cashew Private Limited is the lessee under the said auction purchaser in respect of the land and building. Whiles, the creditor / bank issued one more sale notice for selling the plant and



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machinery of the borrower. Questioning the same, the borrower filed S.A.No.671 of 2023 before Debts Recovery Tribunal No.III, Chennai.

3.S.Shivakumar came to know that the auction purchaser / lessee has sought electricity service connection from TANGEDCO. In fact, TANGEDCO had issued proceedings dated 21.05.2024 in that regard. Questioning the same, S.Shivakumar filed W.P.(MD)No.13596 of 2024.

4.When the writ petition came up for hearing before me, I disposed of the same by directing the writ petitioner to go before the Debts Recovery Tribunal No.III, Chennai and obtain interim order in S.A.No.617 of 2023. The communication dated 21.05.2024 was directed to be put on hold for a period of four weeks. Paragraph No.4 of the order dated 26.06.2024 made in W.P.(MD)No.13596 of 2024 reads as follows:

“4. I am of the view that the petitioner has to necessarily seek the relief now sought before me only in S.A.No.617 of 2023 on the file of the Debts Recovery Tribunal, Chennai. Liberty is given to the petitioner to file an interlocutory application in the pending SARFAESI appeal. The petitioner can implead the present respondents alone in the interlocutory



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application, even though the TANGEDCO is not the respondent in the main appeal. I grant such liberty to the petitioner. Since the matter may become infructuous, the petitioner is given breathing time. I direct respondents 1 and 2 to keep the impugned communication dated 21.05.2024 on hold for a period of four weeks. I make it clear that I have not gone into the merits of the matter. This writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed."

5. Whiles, Shrivari Cashew Private Limited filed W.P.(MD)No.18201 of 2024 for issuing a Writ of Mandamus to direct TANGEDCO to provide new HT electricity service connection in their favour. The said writ petition was disposed of by me on 01.08.2024 in the following terms:

"3. The petitioner was shown as fourth respondent in the previous case. Notice was not issued to the petitioner on the earlier occasion. The petitioner's counsel categorically states that even though time limit imposed by this Court has been expired, the third respondent herein has not obtained any interim order in his favour.

4. In these circumstances, there is no impediment for the first respondent to process the petitioner's application. The first respondent is directed to process the petitioner's application and act as per law. The Writ Petition is disposed of accordingly. No costs."



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Seeking review of the said order dated 01.08.2024, the present review application has been filed.

6.The learned counsel for the review applicant reiterated all the contentions set out in the memorandum of ground of review application. He pointed out that the statement made before this Court that the review applicant had not obtained any interim order in his favour is false. He submitted that status quo order was granted in favour of the review applicant on 29.07.2024. He also pointed out that the copy of the I.A. filed in S.A.No.617 of 2024 was already served in advance on M/s.Shrivari Cashew Private Limited on 22.07.2024. The learned counsel for the review applicant was at pains to point out that there is no whisper about the receipt of advance copies in the affidavit filed in support of W.P.(MD)No.18201 of 2024. He submitted that since the review applicant had obtained interim order in his favour, the very basis on which, the order dated 01.08.2024 was passed in W.P.(MD)No.18201 of 2024 goes and hence, the review application has to be allowed.



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7.Per contra, the learned counsel for the first respondent / writ petitioner submitted that the order dated 01.08.2024 in W.P.(MD)No.18201 of 2024 does not warrant review. According to him, the writ petitioner was not aware of passing of the order on 29.07.2024 by the Tribunal. He pointed out that copy of the said order was received by the writ petitioner only on 05.08.2024 that is subsequent to the passing of order in W.P.(MD)No.18201 of 2024. He also submitted that having regard to the scope of S.A.No.617 of 2023, this review application may not be allowed. He also submitted that the plant and machinery that is the subject matter of S.A.No.617 of 2023 is very much intact as the bank had taken the custody originally and that the writ petitioner had only obtained separate service connection for the newly purchased and installed machinery. He called upon this Court to dismiss the review application.

8.I carefully considered the rival contentions and went through materials on record. I disapprove the conduct of the writ petitioner / first respondent herein. Before me, a categorical statement was made that S.Shivakumar has not obtained any interim order in his favour. Accepting this statement, I even dispensed with issuance of notice to the



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review applicant herein and disposed of W.P.(MD)No.18201 of 2024 on 01.08.2024. It is possible that the writ petitioner was not aware of the passing of the status quo order in S.A.No.617 of 2023 on 29.07.2024. That is beside the point. Positive assertions of fact cannot be made without proper verification of the record. I am satisfied that the advance copies of I.A. filed in S.A.No.617 of 2023 were served on the writ petitioner on 22.07.2024 itself. The affidavit filed in support of W.P. (MD)No.18201 of 2024 is silent on this aspect. As rightly pointed out by the learned counsel for the review applicant, petitioner who approaches the Court must place all the relevant material facts. Withholding relevant information or making positive assertions without verifying the true state of affairs are impermissible. They have a serious bearing on the process of justice. Mere censuring the first respondent in words may not be sufficient. I impose cost of Rs.1,00,000/- on the writ petitioner / first respondent. It is payable to the review applicant forthwith and without delay.

9.The next question that calls for consideration is whether the order dated 01.08.2024 made in W.P.(MD)No.18201 of 2024 has to be recalled or set aside for that reason.



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10.In fact, I had only directed the Superintending Engineer, TANGEDCO to process the writ petitioner's application and act as per law. I have not given any positive direction directing TANGEDCO to grant electricity service connection in favour of the writ petitioner / first respondent.

11.Having said that, I must also observe that there is merit in the contention of the learned counsel for the first respondent that the only relief sought in S.A.No.617 of 2023 is for return of the plant and machinery of S.Shivakumar. It is stated before me that Shrivari Cashew Private Limited has only sought independent service connection and that they have not sought transfer of the earlier service connection that stood in the name of the SS Impex. He would further state that grant of service connection in favour of the first respondent herein would not really affect the eventual outcome of S.A.No.617 of 2023.

12.I am therefore of the view that S.Shivakumar and his associates will have to succeed in S.A.Nos.251 and 543 of 2023. In that event, the rights of the first respondent herein will have to abide by the outcome of the same. If according to S.Shivakumar, the status quo order



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granted on 29.07.2024 has been breached, it is always open to S.Shivakumar to workout his right in the manner known to law.

13.The review application is disposed of accordingly.

Consequently, connected miscellaneous petitions are closed.

11.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN,J.

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