

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.06.2007

CORAM:

THE HONOURABLE MR. JUSTICE K. CHANDRU

M.P. (MD) No. 3026 of 2007

and

M.P. (MD) No. 2 of 2007

E. Ovuraj

.. Petitioner

vs.

1. The Manager
State Bank of India,
Vilathikulam, Tuticorin Dt.

2. GE-WINN Management,
Authorized Agent,
State Bank of India,
Vilathikulam, Tuticorin Dt.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified mandamus, calling for the records of the 1st and 2nd respondents relating to the seizure of the petitioner's Tractor and Trailer bearing Registration No. TN-69-V-3126, Engine No. E-2024733, Chasis No. T.2024217 and TN 69-V-3127, Chasis No. 197/2004 as shown in inventory in annexure C dated 30.01.2007 and quash the same and consequently direct the respondents to hand over the above tractor and Trailer to the petitioner.

For Petitioner : Mr. S. Natarajan

For Respondent No. 1 : Mr. K. M. Vijayakumar

For Respondent No. 2 : No appearance

The petitioner had obtained a loan from the first respondent/Bank for purchasing of a tractor and trailer bearing Registration No.TV 69-V-3126. On account of his default payment, the first respondent/bank issued notices. When the petitioner expressed his difficulty, stating that he does not have money to pay back, as there was no agricultural operations in the last two years, the first respondent bank intimated to the petitioner that they have appointed a recovery agent viz., the second respondent to take appropriate action including repossessing the vehicle as per the terms of agreement signed by the petitioner, which is hypothecation agreement. At page 5 of the said agreement, it is stated that if the petitioner commits any default, the bank has power to recover entire loan and freeze the account of the petitioner and also take appropriate action to encash the security and apart from all these activities they are also entitled to take all action to repossess the vehicle, which is given on hypothecation.

2. It is the allegation of the petitioner that his vehicle was forcibly removed with the help of the police,

despite his protest. The vehicle is now been taken away on 30.01.2007 by the second respondent/agent. The fact that the police help was sought for and the police was also rewarded by the Bank is clearly seen from the letter written by the Bank on 07.03.2007, in which the bank addressed to the Superintendent of Police, expressing their profound gratitude for having responding to the request in seizing the vehicle of the petitioner in question.

3. Mr. K.M. Vijayekumar, the learned counsel appearing for the first respondent states that the petitioner has voluntarily surrendered his vehicle. Further asked as to why they had appointed the recovery agent, the learned counsel stated that it has been approved by the Reserve Bank of India. On the aspect, as to how the vehicle came to the possession of the bank, the learned counsel submitted that the petitioner had voluntarily surrendered the vehicle. Even otherwise, in terms of agreement they are entitled to dispossess the vehicle and the petitioner was duly intimated.

4. However, Mr. S. Natarsjan, the learned counsel appearing for the petitioner drew the attention of this Court to the judgment of the Honourable Supreme Court

reported in (2007(2) CTC 334) Manager ICICI Bank Ltd., Vs. Prakash Kaur & Ors. The Honourable Supreme Court while dealing with the practice of Multi National Banks in engaging recovery agents, did not take issue alleged. However in paragraph 10 of the above said judgment, following directions which is of general nature are given:

"Before we part with this matter, we wish to make it clear that we do not appreciate the procedure adopted by the Bank in removing the vehicle from the possession of the Writ petitioner. The practice of hiring recovery agents, who are musclemen, is deprecated and needs to be discouraged. The Bank should resort to procedure recognized by law to take possession of vehicles in cases where the borrower may have committed default in payment of the instalments instead of taking resort to strong arm tactics.

5. In the light of the above direction of the Honourable Supreme Court, the learned counsel for the petitioner submitted that the impugned action of the respondent bank should be questioned and the vehicle must be returned to him. Though the Honourable Supreme Court dealt with the activities of Multi National Banks, the present case is of the first respondent bank owned by the

Central Government and it is shocking to know that they are also taking similar mode of recovery by engaging recovery agents. The allegations made by the petitioner are accepted. When the petitioner has been deprived of his only property, which he borrowed on a loan from the bank by extra constitutional method adopted by the first respondent bank, the same cannot be condoned.

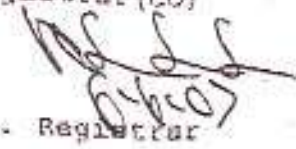
6. However, the learned counsel for the first respondent/bank stated that the petitioner could not escape, having obtained loan and without repaying the same. This Court is not dealing with the said issue. The Bank has got ample power to seek recovery of the dues from the petitioner by seeking appropriate legal procedure on which this Court need not advice them.

7. Under these circumstances, the writ petition stands allowed. The first respondent is directed to return the Tractor and Trailer bearing Registration No. TN-69-V-3126, Engine No. E-2024733, Chassis No. T.2024217 and TN 69-V-3127, Chassis No. 197/2004 in the condition, which it was seized on 30.01.2007 to the petitioner within a period of one week from today. This does not prevent the bank from resorting to appropriate legal remedies in recovering the

own from the petitioner. No costs. Consequently, connected
MP.No. 2 of 2007 is closed.

Sd/-
Asst. Registrar (CO)

/True Copy/


Sub Asst. Registrar

To

1. The Manager
State Bank of India,
Vilathikulam, Tuticorin District.

2. GE-WINN Management,
Authorized Agent,
State Bank of India,
Vilathikulam, Tuticorin District.

+ 1.C.C. to Mr. S. Natarajan, Advocate (SR.No.18024)

+ 1.C.C. to Mr. K.M. Vijayakumar, Advocate (SR.No.18012)

WJ
RN:5.6.2007.
(E.T.)