

**(2009) 08 MAD CK 0112**

**In the Madras High Court**

**Case No :** Writ Petition No. 12761 of 2009 and M.P. No. 2 of 2009

G. Gopalakrishnan

APPELLANT

Vs

The Debts Recovery Tribunal-II and Indian Bank

RESPONDENT

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**Date of Decision :** 18-08-2009

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4)

**Citation :** AIR 2010 Mad 91 : (2010) 4 BC 328 : (2010) 1 MLJ 1415

**Hon'ble Judges :** M. Venugopal, J; Elipe Dharma Rao, J

**Bench :** Division Bench

**Advocate :** S. Parthasarathy for N. Nandakumar, for the Appellant; V. Raghavachari, for R.2, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Elipe Dharma Rao, J.—The petitioner availed secured over draft facility of Rs. 25 lakhs from the second respondent Bank in the year 1995

for the purpose of movie making, agreeing to repay the dues together with contractual rate of interest within six months from the date of sanction

and thereafter, he also seems to have availed another over draft facility of Rs. 5 lakhs on 21.8.1995. Alleging non-payment, the second respondent

Bank has proceeded against the petitioner under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of

Security Interest Act, 2002 (SARFAESI Act in short) and issued demand notice u/s 13(2) and the sale notice u/s 13(4). Aggrieved, the petitioner

filed S.A. No. 136 of 2007 before the first respondent Tribunal and since the same was dismissed by the Tribunal, by the order dated 8.6.2009,

the petitioner has come forward to file this writ petition. Along with the writ

petition, the petitioner has also filed M.P. No. 2 of 2009, praying to stay all proceedings of the second respondent under the SARFAESI Act against the petitioner account, pending disposal of the writ petition.

2. When the above writ petition along with the stay petition in M.P. No. 2 of 2009, came up for admission on 10.7.2009, a contemporary Division

Bench of this Court has passed the following order:

Mr. V. Raghavachari, learned Counsel accepts notice for the second respondent and he is allowed a week's time to file counter affidavit.

The case may be disposed of at the stage of admission. Post the case ""For Admission"" on 20.7.2009.

In the meantime, if the petitioner deposits a sum of Rs. 20 lakhs (Rupees twenty lakhs only) by 12.7.2009 and another sum of Rs. 30 lakhs by

3.8.2009, the respondents may proceed with the auction-sale, but will not confirm the sale, without prior permission of the Court. On failure of

payment, the Court may dismiss the Writ Petition.

(emphasis supplied)

3. Thus, a conditional order has been passed by this Court on 10.7.2009, further making it clear that on failure of payment, the Court may dismiss the writ petition.

4. Today, when this matter has been taken up for consideration, it has been fairly accepted on the part of the learned senior counsel appearing for

the petitioner that the conditional order passed by this Court on 10.7.2009 has not been complied with by the petitioner.

5. On a perusal of the entire materials placed on record, we are able to see that as on 10.3.2003, the outstanding balance in the over draft account

of the petitioner was Rs. 54,50,984/=. The main contention urged on the part of the petitioner before the Tribunal is that the sale notice did not

give 30 clean days time before the date of proposed sale and this contention has been pooh-poohed by the second respondent Bank by producing

the documents to show that the sale notice is dated 30.12.2006 and the date of the sale was fixed as 31.1.2007 and thus, 30 clean days time had

been given by the second respondent Bank in the sale notice and even in the second sale notice dated 1.1.2007, the auction was fixed on

31.1.2007, giving 30 clean days. Even the other ground raised by the petitioner that the possession notice was not served on him was also rejected

by the Tribunal, having regard to the strong documentary evidence available on record showing that the Bank had enclosed a copy of possession

notice served on the petitioner and publication of the same in two newspapers. On a thorough analysis of all these factual aspects, will not, in any

manner, hinder us from arriving at an irresistible conclusion that the Tribunal is right in rejecting the application filed by the petitioner.

6. As has already been observed by us supra, as on 10.3.2003, the outstanding balance in the over draft account of the petitioner was Rs.

54,50,984/= and the conditional order passed by this Court on 10.7.2009 has not been complied with by the petitioner. Therefore, automatically,

the second part of the conditional order, making it clear that on failure of payment, the Court may dismiss the writ petition, would come into

operation, making this writ petition liable to be dismissed.

7. The relief under the extraordinary jurisdiction of this Court under Article 226 of the Constitution is not available as a matter of course and in

exercising the said extraordinary power, the writ court will bear in mind the conduct of the party, who is invoking such jurisdiction. The petitioner is

in huge arrears of public money to the second respondent Bank, and even though this Court has passed a conditional order, the same has not been

complied with by the petitioner. Such a person, who has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution

and who has not complied with the interim order passed by this Court is not entitled to any relief before this Court.

8. At this juncture, we feel it apt to quote a judgment of the Honourable Apex Court in Prestige Lights Ltd. Vs. State Bank of India, . In the said

case also, the appellant company therein has availed loan from the respondent Bank, by mortgaging certain immovable properties and thereafter

failed to repay the same, amounting to a sum of Rs. 87,64,549.42. The borrower has unsuccessfully challenged the sale proceedings initiated by

the Bank before the Tribunal and the High Court and thereafter approached the Honourable Supreme Court wherein a conditional stay order has

been passed by the Honourable Apex Court on 6.5.2005, including a default clause that on non-payment, the stay would stand vacated.

Admittedly, the said conditional order has not been complied with by the petitioner therein. In such circumstances, the Honourable Apex Court has

held in the following terms:

An order passed by a competent court - interim or final - has to be obeyed without any reservation. If such order is disobeyed or not complied

with, the court may refuse the party violating such order to hear him on merits. Refusal to hear a party to the proceeding on merits is a "drastic

step" and such a serious penalty should not be imposed on him except in grave and extraordinary situations, but sometimes such an action is

needed in the larger interest of justice when a party obtaining interim relief intentionally and deliberately flouts such order by not abiding by the

terms and conditions on which a relief is granted by the court in his favour. This, however, does not mean that in each and every case in which a

party has violated an interim order it has no right to be heard at all. Nor will the court refuse to hear him in all circumstances. The normal rule is that

an application by a party will not be entertained until he has purged himself of the contempt. There are, however, certain exceptions to this rule.

One of such exceptions is that the party may appeal with a view to setting aside the order on which his alleged contempt is founded. A person

against whom contempt is alleged must be heard in support of the submission that having regard to the meaning and intendment of the order which

he is said to have disobeyed, his actions did not constitute a breach of it.

A prerogative remedy is not available as a matter of course. In exercising extraordinary power, therefore, a writ court will indeed bear in mind the

conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise

guilty of misleading the court, the court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to

deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rest in disclosure of true,

complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts

would become impossible.

9. The above judgment of the Honourable Apex Court would squarely apply to the facts of the case on hand, being alike. Further more, in view of

the above factual discussion of the case also, no better purpose would be served by keeping this matter pending. In other words, pendency of

matters of this type, wherein huge sums of public money is due from the defaulters of the Banks, will have serious repercussions directly on the

lending capacity of the Banks and on the economy of the nation as a whole and therefore, in the larger interest of the nation and the justice, this

petition filed by a defaulter, who has also failed to comply with the interim order passed by this Court, must fail.

For all the above discussions, this writ petition is liable to be dismissed and the same is dismissed. No costs. Consequently, M.P. No. 2 of 2009 is

also dismissed.