

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P.No.10275 of 2015
and
M.P.No.1 of 2015

D.Balaji ... Petitioner

Vs.

- 1.The Authorised Officer,
Allahabad Bank,
No.112, Sir Thiyagaraya Road,
Chennai-600 017.
- 2.The Branch Manager,
Allahabad Bank,
No.476, Agraharam Street,
Erode-638 001.
- 3.Niraimozhi Nagarajan
- 4.R.Nagarajan
- 5.The Sub Registrar Office,
Erode,
Erode District.

.. Respondents

This writ petition is filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus to call for the records pertaining to sale certificate dated 18.6.2009 registered as document No.2809 of 2009 in the office of the Sub Registrar of Erode and quash the same as ultra vires, unconstitutional, contrary to the provisions of the SARFAESI Act and Rules thereunder and against the principles of natural justice and consequently direct the respondents 1 and 2 to hand over physical possession of the property at Ward No.2, then Ward No.4, Old G.S.No.474, Old T.S.No.31 New Re-survey Ward-C, Block No.6, T.S.No.209, K.N.K. Road admeasuring 2478 sq.ft bearing old Door No.42, New Door No.1137-1140 morefully described in schedule to the petition.

For Petitioner : Mr.R.Prabu
for M/s.Vijaya and Sankalpa

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ORDER

(Order of the Court was made by SATISH K.AGNIHOTRI, J.)

The instant writ petition is filed by the petitioner, challenging the sale certificate issued by the first respondent in favour of the third and fourth respondents under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 in respect of the property at Ward No.2 then Ward No.4, Old G.S.No.474, Old T.S.No.31, now Re-survey Ward-C, Block No.6, T.S.No.209, K.N.K.Road, admeasuring 2478 sq. ft bearing old Door No.42 new Dolor No.1137-1140.

2. The case of the petitioner is that the petitioner received a notice dated 16.9.2013 under the provisions of Section 13(2) of the SARFAESI Act, whereunder the petitioner was informed that the aforestated land in question has been mortgaged in favour of the bank by recital dated 30.03.2003, stating that being guarantor, he is liable to discharge the entire liability within 60 days from the date of the notice. It appears that the petitioner did not respond to the said notice and kept quiet. Thereafter, as pleaded by the petitioner he received notice of auction sale of the said mortgaged property, dated 5.3.2004, intimating the date of auction on 27.3.2004. Further, no steps were taken by the petitioner. The auction was held and the impugned sale certificate in favour of the successful bidder was issued on 18.6.2009. After a period of six years, the petitioner questions the legality and validity of the sale certificate on the ground that the property was never mortgaged and the mortgage deed was obtained by fraud.

3. Presuming that there was some misrepresentation or fraud in execution of the mortgage recital dated 30.03.2003, but the petitioner was put to proper notice at every stage before the secured creditor initiated action to take over the possession. Thus, the pleading of fraud and misrepresentation is noticed to be rejected, at this stage. The petitioner has failed to make out a case for interference in the sale certificate issued six years back after following all procedures as required under the provisions of the Act and as such, the writ petition is devoid of merit. Accordingly, the same is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The Authorised Officer,
Allahabad Bank,
No.112, Sir Thiagaraya Road,
Chennai-600 017.

2.The Branch Manager,
Allahabad Bank,
No.476, Agraharam Street,
Erode-638 001.

3.The Sub Registrar Office,
Erode,
Erode District.

+1 cc to M/s.Vijaya & Sankalpa, Advocate,SR.19514.

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