IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2015

CORAM

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

W.P. No.18059 of 2015 and M.P. Nos.1 & 2 of 2015

R. Thirunavukkarasu ... Petitioner

vs.

The Authorised Officer
Vijaya Bank
Asset Recovery Management Branch
No.144, Moore Street
Chennai 600 001 ... Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records, pertaining to the e-auction sale notice dated 19.05.2015, bringing the property described in the schedule hereunder for sale in the auction to be held on 10.07.2015 and quash the same and direct the respondent to issue sale certificate in pursuance of the e-auction sale held on 25.09.2014 in which the petitioner was knocked as the highest bidder.

Schedule

All that part and parcel of land known as Plot No.B-1, Door No.30, Lal Bahadhur Sastri Street, Survey No.658/5B, Solinganallur – 1 Village, Tambaram Taluk, Kanchipuram District, the Sub-Registration District of Neelankari and Registration District of Chennai South, measuring an extent of 797.50 sq. ft. bounded on the:

North by Housing bearing Door No.29
South by 10"0" lane and land belonging to Mrs. Kanthammal
East by Plot No.B-2 sold to Mr. K. Chandrasekar; and
West by Plot No."A", belonging to the vendor

For petitioner Mr. N. Ramesh

For respondent Mr. E. Omprakash
for M/s. Ramalingam & Associates

ORDER

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

Mr. E. Omprakash, learned counsel representing M/s. Ramalingam & Associates, accepts notice for the respondent bank. With the consent of the learned counsel on either side, the writ petition is taken up for final disposal, at the admission stage itself.

2 The instant writ petition is filed by the purchaser who had purportedly purchased the property in question pursuant to the e-auction held on 25.09.2014, challenging the e-auction sale notice dated 19.05.2015, bringing the property in question for sale again in the auction to be held on 10.07.2015.

3 One V.V.C.Rajendran, Proprietor of Image Prints, who failed to discharge his liability against the credit facilities advanced by the respondent bank against the property in question, is not impleaded as a party respondent. As aforestated, pursuant to the e-auction sale notice, the petitioner participated in the e-auction held on 25.09.2014.

4 As per the terms and conditions of the e-auction sale notice dated 13.08.2014, the petitioner deposited Earnest Money Deposit of 5%, viz., Rs.1,00,000/- of the reserve price and participated in the e-auction sale. He was also declared as the successful bidder. As such, as successful bidder, as per Clause 9 of the e-auction sale notice, he was required to deposit 25% of the bid amount plus poundage fee of 1% of bid amount plus Rs.10, i.e., Rs.5,65,000/- was to be deposited on 25.09.2014. But, the same was deposited only on 26.09.2014. The remaining amount to the tune of Rs.19.95 lakhs was required to be paid on or before 10.10.2014 as per condition 9 of the terms and conditions of the auction sale. The petitioner failed to deposit the said amount within the prescribed time. However, according to him, a sum of Rs.10.85 lakhs was deposited on various dates between 21.01.2015 and 09.03.2015. The balance of Rs.9.10 lakhs still remains due and payable.

5 Noticing the default on the part of the petitioner, being the highest bidder, in making deposit as per clause 9 of the e-auction sale notice, letter dated 16.04.2015 was sent to the petitioner cancelling the sale and forfeiting the deposit amount with the bank as per clause 10 of the e-auction sale notice. Thereafter, the petitioner deposited the balance amount of Rs.9.10 lakhs on 18.04.2015 and 23.04.2015 by RTGS.

6 The learned counsel for the petitioner submits that since the entire amount has already been deposited, the property be restrained from being put again on sale and the sale certificate be issued in favour of the petitioner, after handing over possession of the property in question.

7 On the other hand, the learned counsel for the respondent bank would submit that the petitioner did not deposit the amount as per the terms and conditions of the auction sale. Subsequently, the amount was sent under RTGS and as such, the same cannot be held as accepted by the bank. The petitioner is entitled to take back the said money, as the same was never accepted by the respondent bank. The order of forfeiture is legal and in terms of the sale conditions. The bank, having waited for such a long time, had no other option, but, to bring the property again on sale to secure its outstanding dues from the borrower.

8 We have examined the facts from all angles. There is no dispute that the petitioner, being the highest bidder, was required to pay the total amount, i.e., sale consideration on or before 10.10.2014. It is also not in dispute that even the deposit of 25%, which was required to be made on 25.09.2014, was made only on the next day. The petitioner had taken his own time without any permission for extension of time. Thus, the subsequent deposit does not validate the sale and it cannot be held that the petitioner had deposited the entire amount as per the terms and conditions of the sale. The decision of cancelling the sale and forfeiting the amount cannot be faulted with.

9 However, having regard to the fair statement/concession made by the learned counsel for the respondent bank that since the amount was not accepted by the bank and the same was deposited through RTGS, the petitioner is entitled to take back the money, the petitioner is entitled to take back the money. The sale is rightly cancelled. We are of the considered view that the second e-auction sale which is under challenge in the instant writ petition, is just and proper. The petitioner is at liberty to participate in the auction sale.

10 So far as the Earnest Money Deposit amount is concerned, having regard to the facts situation, particularly, the fact of demise of the petitioner's father, which according to the petitioner, was the reason for not being able to honour the sale condition, the said Earnest Money Deposit amount be adjusted against the petitioner's participation in the ensuing e-auction sale to be held on 10.07.2015.

11 With the aforesaid observation, the writ petition stands disposed of. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cad

To

The Authorised Officer
Vijaya Bank
Asset Recovery Management Branch
No.144, Moore Street
Chennai 600 001

2 ccs to M/s. Ramalingam & Associates Advocate Sr.33740

W.P. No.18059 of 2015

BVR(CO)
Eu 16.7.15