

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2015

CORAM

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR. JUSTICE M. VENUGOPAL

W.P. No. 2520 of 2015 and M.P. Nos.1 & 2 of 2015

Bhavaa Paper Pulp Packs
represented by its Partner
Mr. S.R. Subbiah Senthil
No.5/1133, Brindavan Garden
Poyamapalayam Priuvu (West)
Pichampalayam Pudur Post
Tirupur 641 603

Petitioner

Vs.

The Authorised Officer/Chief Manager
Canara Bank
SME Branch
Tirupur
Kurinji Towers
40-B, Appachi Nagar Main Road
Kongu Nagar, Tirupur 641 607

Respondent

Writ Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the records pertaining to the impugned order of the respondent bank pertaining to its e-auction notice dated 31.12.2014 and published in the Dhina Malar daily dated 01.01.2015 and quash the same and consequently, direct the respondent bank to initiate proceedings as against the properties of Bhavaa Paper Pulp Packs Unit situated in Moolanur, before bringing the properties of the Bhavaa Trade Packing Unit, Tiruppur for auction.

For petitioner

Mr. G. Arulmurugan
for M/s.P.Muthukrishnan

O R D E R

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

The challenge in this writ petition is to the E-Auction Notice dated 31.12.2014 issued under Rules 8(6) and 9 of the Security Interest (Enforcement) Rules, 2002 (for short "the Rules 2002").

2 The prime contention of the learned counsel for the petitioner is that the respondent bank ought to have initiated proceedings against the property of Bhavaa Paper Pulp Packs, whose account was classified as Non Performing Asset before initiating proceedings against the property of Bhavaa Tray Packaging, which was also classified as a deemed Non Performing Asset, due to the default of the former's account. It is further contended that the sale proceeds of Bhavaa Paper Pulp Packs would satisfy the outstanding dues of the bank and as such, the said property should have been brought for sale and not the property of Bhavaa Tray Packaging, which is a running concern and which has several employees on its rolls, who are depending on their job to eke out their livelihood.

3 We have examined the impugned E-Auction Notice issued under Rules 8(6) and 9 of the Rules 2002.

4 Rule 8 of the Rules contemplates sale of immovable secured asset. Sub-rule 6 provides that a notice shall be served on the borrower granting 30 days time before sale of the immovable secured asset. Rule 9 of the Rules provides that no sale of immovable properties shall take place before the expiry of 30 days from the date on which public notice of sale is published. The time lag of 30 days has been provided to enable the borrower to make a representation and also to settle the dispute by making payment. There is no dispute that both the properties are secured assets. Now, the question is as to which property should be sold at the first stage. This has to be decided by the Recovery Officer/Authorised Officer. For that purpose, the borrower is at liberty to make a representation to the Recovery Officer/Authorised Officer. If such a representation is made, the Recovery Officer/Authorised Officer is competent to consider and decide the same in accordance with law. The petitioner has not pointed out that any representation was made to the Recovery Officer/Authorised Officer to this effect before approaching this Court, seeking quashing of the auction notice, as aforestated. The E-Auction Notice cannot be quashed on the grounds as stated by the petitioner hereinabove. It is not the case of the petitioner that without following the statutory requirements, i.e., without affording any opportunity to the borrower under the provisions of Section 13(2) and 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and other relevant provisions, the property in question has been put to sale by way of e-auction.

5 Thus, the writ petition is devoid of any merit and is accordingly dismissed. However, the petitioner is at liberty to make a representation to the prescribed authority under the provisions of law, if so advised. No costs. Connected Miscellaneous Petitions are closed.

cad

-s/d-

Assistant Registrar (CO)

Dt:6/2/2015

True Copy

Sub-Assistant Registrar

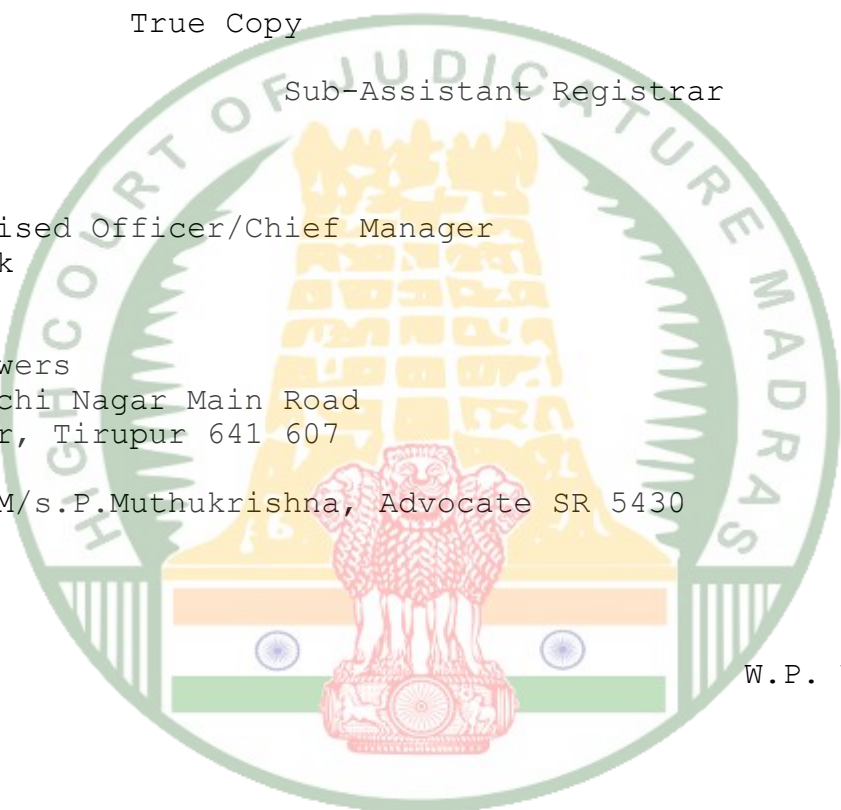
To

The Authorised Officer/Chief Manager
Canara Bank
SME Branch
Tirupur
Kurinji Towers
40-B, Appachi Nagar Main Road
Kongu Nagar, Tirupur 641 607

+ 1 cc to M/s.P.Muthukrishna, Advocate SR 5430

rsi(co)
prk6/2

W.P. No. 2520 of 2015

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital of Ashoka at its base. The gopuram is set against a background of a green and white striped field. The words "HIGH COURT OF JUDICATURE MADRAS" are inscribed in a green circle around the central image. Below the seal, the motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

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