

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2015

CORAM

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

THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P. No.2581 of 2015 and M.P. Nos.1 & 2 of 2015

R. Balasubramaniam

Petitioner

- vs.
- 1 The Recovery Officer
Debts Recovery Tribunal
Office of the Recovery Officer
No.1670, Trichy Road
Ramanathapuram
Coimbatore 45
 - 2 The Punjab National Bank
represented by its Branch Manager
Pollachi
Coimbatore District
 - 3 B. Senthilkumar
- Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the entire records relating to the impugned E auction notice in RP No.4 of 2014 in DRC No.4 of 2014 in O.A. No.70 of 2010 dated 12.01.2015 issued by the first respondent and quash the same.

For petitioner Mr. C. Prakasam

ORDER

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

The challenge in this writ petition is to the E-Auction Sale Postponement Notice dated 12.01.2015 issued by the first respondent.

2 The brief facts, lie in narrow compass, as projected by the petitioner are that the third respondent, viz., B.Senthilkumar obtained a loan to the tune of Rs.2.25 lakhs in the year 1999 from the second respondent bank. The petitioner, being the father of the

borrower, stood guarantee for the same. The second respondent bank filed a civil suit, being O.S. No.782 of 2007 on the file of the District Court, Coimbatore, which was decreed on 31.07.2008, directing the defendants to pay a sum of Rs.7,65,518/- with interest at the rate of 13% per annum. On the strength of the said decree, the second respondent bank filed O.A. No.70 of 2010 on the file of the Debt Recovery Tribunal, Coimbatore. After the conclusion of the proceedings, Recovery Officer was appointed and he issued an E-Auction Sale Proclamation Notice on 01.12.2014, specifically informing the petitioner, his son, viz., the third respondent-borrower and the Proprietor of Senthil Traders, as required under the provisions of Rule 38 and 52(2) of the Second Schedule to the Income Tax Act, 1961 (for short "the Income Tax Act") read with Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short "the RDDBFI Act"). Thereafter, the date of auction was postponed which was informed by the impugned notice dated 12.01.2015. The petitioner had not chosen to question the legality of the E-Auction Sale Proclamation Notice dated 01.12.2014. The petitioner has filed a copy of the notice issued by the Debt Recovery Tribunal, Office of the Recovery Officer dated 14.01.2015, wherein, the petitioner was given an opportunity to appear on 23.01.2015 and make a representation and submission. There is no mention in the affidavit as to what has happened thereafter.

3 Mr. C. Prakasam, learned counsel for the petitioner would submit that an ex parte decree was passed by the District Court, Coimbatore and as such, the petitioner had no opportunity to represent the case before the Court. It is further submitted that the auction notice on the basis of the ex parte decree be quashed.

4 We have considered the submissions made by the learned counsel for the petitioner and also perused the pleadings and documents appended thereto.

5 On a perusal of the documents, it appears that notice of demand to the defendants, i.e., the borrower and the petitioner, under the provisions of Rule 2 of Second Schedule to the Income Tax Act read with Rules 25 to 29 of the RDDBFI Act was issued on 05.02.2014. Thereafter, notice for drawing proclamation of sale under Section 25 to 29 of the RDDBFI Act read with Rule 53 of the Second Schedule to the Income Tax Act was issued on 26.03.2014. On the same day, an order of attachment of the immovable property was passed. Further, it is apparent that no steps had been taken either by the petitioner or the borrower to make payment of the loan amount. Thus, the E-Auction Sale Proclamation Notice came to be issued on 01.12.2014. Thereafter, the impugned E-Auction Sale Postponement Notice was issued on 12.01.2015.

6 The conspectus of facts, as aforesated, clearly establishes that the petitioner, being guarantor and also the father of the borrower-son, had ample opportunity to make deficit the default. At no point of time, the borrower as well as the guarantor had come forward to settle the outstanding amount. At this stage, we are afraid that no interference can be made on unsustainable grounds. The petitioner has failed to establish that there was a breach of any statutory prescription which leads to come to the conclusion that the subject E-Auction Sale Postponement Notice was incompetent and improper.

7 Therefore, we are not inclined to interfere with the impugned E-Auction Sale Postponement Notice, at this stage. The petitioner is at liberty to work out his remedy in accordance with the provisions of law.

8 Resultantly, the writ petition stands dismissed. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

cad

To

1 The Recovery Officer
Debts Recovery Tribunal
Office of the Recovery Officer
No.1670, Trichy Road
Ramanathapuram
Coimbatore 45

2 The Branch Manager
Punjab National Bank
Pollachi
Coimbatore District

1 cc to Mr.C. Prakasam, Advocate, sr. 5876

W.P. No.2581 of 2015

NM (CO)
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