

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2016

CORAM

THE HON'BLE MR. JUSTICE SATISH K.AGNIHOTRI
and
THE HON'BLE MR. JUSTICE V.BHARATHIDASAN

W.P. No.11244 of 2016

A.Maheshkumar .. Petitioner

Vs.

- 1.The Branch Manager,
M/s.Export Import Bank of India,
Overseas Tower, 4th and 5th Floor,
No.756-L, Anna Salai,
Chennai - 2.
- 2.The Authorised Officer,
M/s.Export Import Bank of India,
Centre One Building,
Floor No.21, World Trade Centre
Complex, Cuffe Parade,
Mumbai - 400 005.
- 3.The Authorised Officer,
M/s.Export Import Bank of India,
Regional Office,
UTI House, First Floor,
No.29, Rajaji Salai, Chennai - 1. .. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of mandamus directing the respondents to return a sum of Rs.34,83,000/- with 12% interest from the date of sale on 21.01.2013 till the date of realisation with the compensation of Rs.5,00,000/- within a stipulated time that may be fixed by this Court.

For Petitioner .. Mr.C.Prabakaran

For Respondents.. Mr.Suresh
for M/s.Shivakumar & Suresh

ORDER

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

With the consent of the learned counsel appearing for the parties, the writ petition is taken up for final disposal.

2. Seeking a direction to the respondents to return a sum of Rs.34,83,000/- with 12% interest from the date of sale i.e. on 21.01.2013 till the date of realisation with the compensation of Rs.5,00,000/-, the petitioner has come up with the instant writ petition.

3. The indisputable facts relevant for adjudication of the dispute is that the petitioner, in response to the tender-cum-public sale auction of the property in Survey No.70/7 measuring an extent of 37 cents situate at No.106, Azhinchivakkam Village, forming part of Jagannathapuram Group, Ponneri Taluk, Thiruvallur District, participated in the auction held on 22 June 2012. The reserve price fixed for the property was Rs.32 lakhs. The petitioner had deposited Rs.3,20,000/- as Earnest Money Deposit. The petitioner was declared as successful bidder and pursuant thereto, he deposited the balance amount of Rs.24,18,750/- and a sale certificate was also executed in favour of the petitioner by the third respondent on 21 January 2013. When the petitioner applied for encumbrance certificate, he came to know that an agreement dated 08 August 2014 was executed by the respondents in favour of Edelweiss Asset Reconstruction Company Limited for a value of Rs.1,34,00,000/- and the property was also transferred in their favour.

4. Upon verification, it was found that the original owners of the property filed S.A.No.207 of 2012 before the Debt Recovery Tribunal-III, Chennai (for short 'the Tribunal'), to set aside the sale held on 12 June 2012, without impleading the petitioner and by order dated 08 December 2013, the Tribunal set aside the sale on the ground that the respondents/Bank have not followed the procedure mandated under the Act and committed several irregularities. When the petitioner came to know about these proceedings, he caused a legal notice dated 26 February 2016 calling upon the respondents/Bank to repay the amount of Rs.34,83,000/- together with 12% interest from the date of execution of the sale certificate i.e. 21 January 2013 and also a compensation of Rs.5,00,000/- for the loss and mental agony caused to him. Since the respondents have not come forward with any communication regarding refund of sale consideration, the petitioner is before this Court.

5.Learned counsel appearing for the respondents submits that the amount has been paid towards the sale consideration of the property and as such, the petitioner is not entitled to the claim for refund of the same.

6.Be that as it may, it is not in dispute that the petitioner, being the successful bidder, deposited the requisite amount within the prescribed time. The petitioner cannot be held liable and he may also not be taken as proper and relevant party on account of having participated in the auction proceedings and depositing the money. The petitioner is entitled to the said amount, which is lying with the Bank. The petitioner has been deprived fruits of the said amount as the same is lying idle with the Bank and as such he is entitled to interest thereon.

7.We accordingly direct the respondents/Bank to return back the said amount of Rs.34,83,000/- (Rupees Thirty Four Lakhs Eighty Three Thousand only) to the petitioner with interest at the rate of 9% per annum payable from 21 January 2013 upto date within a period of one week from today subject to return of all the documents in respect of the property lying with the petitioner.

8.With the aforestated observation and direction, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Branch Manager,
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Regional Office,
UTI House, First Floor,
No.29, Rajaji Salai, Chennai - 1.

+1cc to Mr.Shivakumar, Advocate, S.R.No.25510
+1cc to Mr.C.Prabakaran, Advocate, S.R.No.25605

W.P. No.11244 of 2016

mg (CO)
srg (27/04/2016)



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