IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 7.10.2016

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE N.AUTHINATHAN

Writ Petition No.33116 of 2016
and
WMP No.28636 of 2016

Arunagiri .... Petitioner

vs.

1.The Authorised Officer
The Karur Vysya Bank
Sba Complex, 7/73 I Floor
Venkatesa Choudhary Street
West Tambaram, Chennai - 600045

2.The Branch Manager
Karur Vysya Bank
Tirupattur Branch
Vellore District .... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, for a writ of mandamus directing the respondents to conclude the sale by receiving the remaining 75% of bid amount and issue sale certificate in accordance with law.

For Petitioner : Mr.A.Gokulakrishnan
For Respondents : Mr.A.V.Radhakrishanan

ORDER
(delivered by S.MANIKUMAR, J)

Auction Purchaser, has sought for a writ of mandamus directing the respondents herein, to conclude the sale by receiving the remaining 75% of the bid amount and issue Sale Certificate in accordance with law.

2. On 22.9.2016, after considering the averments made in the supporting affidavit, and submissions of Mr.Hasan Mohammed Jinnah, learned counsel for the petitioner, we passed the following order:

" Inviting the attention of this Court to Rule

9 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Mr.Hasan Mohammed Jinnah, learned counsel for the petitioner submitted that in the e-auction, conducted on 7/9/2016, the petitioner was the highest bidder for a sum of Rs.71,70,000/- (Rupees Seventy One lakhs and Seventy thousand only). He further submitted that after remitting 25% of the value i.e, Rs.17,92,500/-, in the Bank, the petitioner sent a letter, dated 17/9/2016, to the Branch Manager, Karur Vysya Bank, Tirupattur Branch, Vellore District, expressing his readiness to remit the balance of 75% and requested for confirmation in writing.

2. Mr.Hasan Mohammed Jinnah, learned counsel for the petitioner submitted that a Demand Draft for the balance amount had already been taken, though tendered, not accepted by the Bank.

3. His submission is placed on record.

4. Rule 9 (3) of the above said Act reads as follows:-

"On every sale of immovable property, the purchaser shall immediately pay a deposit of twenty-five per cent of the amount of the sale price, to the authorised officer conducting the sale and in default of such deposit, the property shall forthwith be sold again.

5. Rule 9 (4) of the above said Act, reads as follows:-

"the balance amount of purchase price payable shall be paid by a purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the parties.

6. Rule 9 (5) of the said Act reads as follows:-

"In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

7. Having regard to the submission of the learned counsel for the petitioner that a Demand Draft for the balance amount had already been taken, not accepted by the Bank and for the reasons

stated supra, we are inclined to order notice to the respondents through Court and post returnable, by 30/9/2016.

8. Call on 3/10/2016. In the meanwhile, there shall be an order of interim injunction."

3. Subsequently, on 4.10.2016, we extended the interim order, granted on 22.9.2016, and directed the Registry to post the matter on 7.10.2016 and thus it is listed today.

4. Based on the averments made in the counter affidavit, filed by Karur Vysya Bank Ltd, Mr.A.V.Radhakrishnan, learned counsel for the bank submitted that one Mr.T.K.Perumal, availed loan, for which the subject property has been mortgaged. Loan was sanctioned. There was default. On 1.4.2015, loan account was classified as Non Performing Asset. Steps were taken under the Securitisation and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002. On 7.9.2016, subject property was auctioned. Writ petitioner was the sole bidder and quoted a sum of Rs.71,70,000/-, as against the reserve price of Rs.71,60,000/-. The first respondent-bank, declared him as the successful bidder. A sum of Rs.17,92,500/- was deposited by way of demand draft on 7.9.2016, being 25% of the bid amount. The balance of the bid amount has to be paid within 15 days from the date of confirmation. On 16.9.2016, the mortgagor/borrower, remitted a sum of Rs.71,80,000/- in order to secure/redeem the said property and close the loan account maintained with the second respondent bank. He also wrote a letter dated 16.9.2016 requesting the bank to hand over the original documents and to discharge the equitable mortgage with the Sub Registrar, Tirupattur.

5. Taking note of the right of the borrower, to redeem the property and after approval, the bank sent an e-mail on 19.9.2016 to the writ petitioner/auction purchaser stating that, as the borrower had paid the amount, auction sale has been cancelled. E-Mail dated 19.9.2016, addressed to the petitioner is extracted hereunder:

"Dear Sir,

Kindly refer our mail dated 7th September 2016.

Regarding e auction of property mentioned in our e auction notice published in The Hindu on 6th August 2016 under SARFAESI Act, we inform the following.
At the outset, we thank you very much for participating in the above auction.
Since the respective borrower of our Bank has paid the amount, we hereby cancel the above auction sale which please note.

In this regard, kindly recall our personal visit to your office today at Tirupattur and you may take delivery of the pay order No.066082 dated 19.9.2016 for Rs.1792500.00 or instruct us suitably the mode of returning the said amount to you.

Kindly acknowledge receipt.

Thanking you,

Yours faithfully,

BRANCH MANAGER"

6. Mr.A.V.Radhakrishnan, learned counsel for the bank has further stated that, as per clause 6 of the terms and conditions of sale, "sale shall be conferred on the person making highest offer/tender/bid subject to confirmation by the secured creditor. The Authorised Officer reserves the right to accept or reject the bid/tender without assigning any reason whatsoever." He further submitted that clause 21 of the Financial Terms, accompanying tender/bid form states that "the bank reserves its right to accept/reject any tender-cum-auction application, withdraw any lot at any stage from sale, without assigning any reason thereof, and the EMD would be refunded."

7. Placing reliance on the decision of the Hon'ble Supreme Court in Narandas Karsondas vs S.A.Kamtam and another reported in (1977) 3 SCC 247, Mr.A.V.Radhakrishnan, learned counsel for the respondent-bank, further submitted that right of redemption is always available to the borrower. He also drew the attention of this court to the decision of the Hon'ble Supreme Court in Mathew Varghese Vs. M.Amritha Kumar & Ors reported in 2014 (5) SCC 610.

8. Learned counsel for the bank further submitted that the petitioner was aware of the cancellation of sale, and that even the demand draft dated 07.09.2016 was not encashed. Along with a letter dated 19.9.2016, it was returned to the petitioner. Receipt of the demand draft by the petitioner, postal acknowledgment supporting the above contentions are enclosed, in the typed set of papers.

9. Right of redemption of the property by the borrower has been explained in Narandas Karsondas vs S.A.Kamtam and another reported in (1977) 3 SCC 247 and the Apex Court held the right of redemption is not extinguished on the expiry of the period. Equity of redemption is not extinguished by a mere contract for sale.

10. Further in Mathew Varghese Vs. M.Amritha Kumar & Ors reported in 2014 (5) SCC 610, the Hon'ble Supreme Court held

as follows:

> "....until the sale is complete by registration of sale, the mortgagor does not loose the right of redemption...We find no reason to state that the principles laid down with reference to Section 60 of the T.P. Act which is general in nature in respect of all mortgages, can have no application in respect of a secured interest in a secured asset created in favour of a secured creditor, as all the above-stated principles apply in all force in respect of a transaction as between the debtor and secured creditor under the provisions of the SARFAESI Act."

11. Within 15 days from the date of auction sale, the borrower has remitted the entire bid amount of Rs.71,70,000/- and in addition to the above, he has also remitted a sum of Rs.10,000/- in order to secure/redeem his property and to close the loan account with Karur Vysya Bank. Mr.A.V.Radhakrishnan, learned counsel for the respondent-bank submitted that the amount remitted satisfied the outstanding loan with the bank and due to the pendency of the present writ petition, closure is yet to be made.

12. Though the petitioner has been informed of the cancellation of the sale, as early as on 19.9.2016 by e-mail, he has conveniently suppressed the same, when the matter was taken up for hearing on 22.9.2016. Even after the receipt of the demand draft, on 28.9.2016, he has not disclosed the same to this court. Despite the above, submissions have been made alleging that the respondents were misusing and abusing their official position, in not confirming the sale, in spite of the auction purchaser, being ready to remit the balance 75% of the sale consideration.

13. Bank transactions enclosed in the typed set of papers, indicate that on 7.9.2016, for a sum of Rs.10,76,500/- a demand draft has been taken. They also do not indicate that the petitioner had taken any demand draft to pay the balance sale amount. Earlier on the above mentioned dates, submissions were made by the learned counsel for the petitioner that the petitioner was ready to make payments by RTGS, which is nothing, but money transfer. There is nothing to indicate such transaction. Despite cancellation of auction as early as on 19.9.2016, all along this court has been misled, when the petitioner had obtained interim orders and by the time the interim order was extended on 4.10.2016, the petitioner had also received the demand draft from the bank. Conduct of the writ petitioner in not disclosing true facts to this court, cannot be appreciated and for this, this court deems it fit to impose a cost of Rs.5,000/- to be paid to the respondent-bank, within a period of one week from the date of receipt of a copy of this order.

With the above observations and directions, the writ petition is dismissed with cost of Rs.5,000/-, to be paid to the respondent-bank, within a period of one week from the date of receipt of a copy of this order. Interim stay is vacated. Consequently, the connected writ miscellaneous petition is closed.

Sd/-
ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

To
1 The Karur Vysya Bank,
The Authorised Officer,
SBA Complex, 7/73 I Floor
Venkatesa Choudhary Street
West Tambaram, Chennai - 600045

2.The Branch Manager
Karur Vysya Bank
Tirupattur Branch
Vellore District

+1 cc to M/S. Mr.Hasan Mohammed Jinnah, Advocate SR.NO. 58049

+1 cc to M/S. Mr.A.V.Radha Krishnan, Advocate SR.NO. 58049

W.P.No.33116 of 2016

SSK(C.O)
MMP 12.11.2016