

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2016

CORAM

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

W.P.No. 3856 of 2016

1. Rakesh M. Jain
2. Mrs. Padma M. Jain Petitioners

Vs.

1. Indiabulls,
rep. By its Authorised Officer,
Mr. R. Inbasekaran,
No. 20 Apex Chamber 1st Floor,
Sir Thiyagaraya Road,
Chennai 600 017.
2. Francis George,
Proprietor of M/s. Shine Garments,
No.154, North Usman Road,
T. Nagar, Chennai 600 017. .. Respondents

This writ petition is filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the proceedings of the 1st respondent in letter dated 16.11.2015 and quash the same and consequently direct the first respondent to refund the amount of Rs.3,51,00,000/- with interest @ 12% p.a.

For petitioners : Mr. S. Ravikumar

For Respondents : Mr. C. Umashankar - R1

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ORDER

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

Heard the learned counsel for the petitioners and the learned counsel appearing for the first respondent. Notice to the second respondent is dispensed with at this stage, inasmuch as no adverse order is passed against him in this writ petition. With the consent of the learned counsel for the petitioners and the learned counsel appearing for the respondents 1 and 2, this writ petition is taken up for final disposal.

2. Questioning the legality and validity of the order dated 16.11.2015, and also for a direction to the first respondent to refund the amount of Rs.3,51,00,000/- with interest at the rate of 12% p.a., the instant writ petition is filed.

3. The case of the petitioners is that the first petitioner entered into a tripartite agreement with the respondents to purchase the property belonging to the first respondent, which was mortgaged with the second respondent. As the agreement was not enforced, it was cancelled. Thus, the first respondent being a secured creditor obtained physical possession of the said property vide order dated 08.09.2014 passed by the Chief Metropolitan Magistrate, Egmore, in CrI.M.P.No.6052 of 2014. Thereafter, the property was brought for e-auction sale on 28.02.2015 wherein, the petitioners participated and they were declared as successful bidder. The petitioners had paid the sale price of Rs.3,51,00,000/- and a sale certificate was also issued in favour of them. The said e-auction sale was set aside by the Debts Recovery Tribunal in the appeal filed by the second respondent. Thereafter, the tenant of the demised premises filed a writ petition in WP No. 5872 of 2015, wherein, the order dated 12.6.2015 passed by the Chief Metropolitan Magistrate, Egmore, was set aside and remanded for reconsideration. Though the sale was set aside, the first respondent passed the impugned proceedings refusing to refund the sum of Rs.3,51,00,000/- to the petitioners. Thus, the present writ petition for the aforestated relief.

4. According to the learned counsel for the first respondent, since the matter is pending before the Chief Metropolitan Magistrate, Egmore, for fresh consideration and the status quo order has been granted, the Bank is not in a position to refund the amount to the petitioners. Further more, the petitioners are not entitled for the exorbitant rate of interest as claimed by them.

5. In view of the aforestated facts and circumstances of the case and the submission made by the learned counsel for the

first respondent, this Court is of the view that since the e-auction sale has already been set aside, the first respondent is not entitled to retain the amount of Rs.3,51,00,000/- paid as sale consideration. Though the petitioners are entitled to refund of the said amount, they cannot claim higher rate of interest without any basis.

6. Thus, this writ petition is allowed with a direction to the first respondent to refund the amount of Rs.3,51,00,000/-, which was paid as sale consideration, with interest at the rate of 6% p.a., on or before 30th April, 2016. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

+2 ccs to Mr.S.RaviKumar Advocate sr.18161/16

+1 ccs to Mr.C.Uma Shankar advocate sr.18569/16

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