



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.10.2016

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P (MD) .No.22692 of 2015

C.Karunakaran

... Petitioner

Vs

1.The Authorized Officer,
Syndicate Bank,
Regional Office,
Claret Plaza, Melakkal Main Road,
Madurai-625 016.

2.The Branch Manager/Chief Manager,
Syndicate Bank,
Nagal Nagar Branch,
Dindigul.

3.D.S.Ramesh

... Respondents

This Writ Petition is filed under Article 226 of the Constitution of India praying for a WRIT OF CERTIORARIFIED MANDAMUS to call for the records pertaining the E-Auction Sale Notice Ref.No.MRO/REC/2015/SARFAESI dated 28.09.2015 and the consequential sale held on 13.11.2015 ending up with issuance of Sale Certificate and quash the same and consequently direct the 1st respondent to confirm the sale in favour of the petitioner pursuant to the E-Auction Sale Notice dated 05.05.2015 and the sale held on 10.06.2015 in respect of the property in Door No.1, Pandian Nagar,Dindigul.

For Petitioner :Mr.M.Karthikeya Venkitachalapathy
For R.1&2 :Mr.R.Pandivel
For R.3 :Mr.PTS.Narendravasan

ORDER

[Order of the Court was made by **M.SATHYANARAYANAN, J.**]

By consent, this Writ Petition is taken up for final



2. The petitioner, would aver among other things, that his wife had started the Company along with one Raja in the name and style of M/s.Green Health Agro Oils (P) Ltd and borrowed credit facilities to the tune of Rs.3.25 crores from the second respondent bank and the wife of the petitioner stood as a guarantor and mortgaged the dwelling house in Door No.1, Pandian Nagar, Dindigul. It is further stated by the petitioner that on account of the fact that the business went into bad weather, the Company became sick and the first respondent has invoked the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and issued notice under Section 13(2) of the Act, followed by a possession notice. The petitioner would further state that the first respondent bank went for E-auction on 05.05.2015 fixing the date of sale on 10.06.2015 and also by fixing the upset price as Rs.1.40 crores and the petitioner, in order to save the property decided to participate in the auction and paid 10% of the earnest money deposit and submitted his bid amount of Rs.1,40,25,000/- and he was the sole bidder in the auction sale conducted, on 10.06.2015. However, it was not confirmed in his favour. But, to his shock and surprise, for the very same property, fresh sale auction notice was issued on 11.07.2015 by fixing the date of sale, on 19.08.2015 and increased the upset price to Rs.1.55 crores. The petitioner paid a sum of Rs.1.5 lakhs on 16.07.2015 being the additional amount to be paid to meet out the 10% of earnest money deposit to participate in the E-Auction sale scheduled to be held on 19.08.2015. However, it was not conducted by the official respondents on the said date and the auction got postponed on 04.09.2015, without assigning any reason.

3. It is the specific stand of the petitioner that the official respondents 1 and 2 in connivance with the borrowers once again went for a fresh auction on 28.09.2015 by fixing the date of sale on 13.11.2015 and also by fixing the upset price of Rs.1.55 crores for the property in question and Challenging the legality of the said proceedings, he came forward to file this Writ Petition.

4. Learned Counsel for the petitioner would vehemently contend that though initially, the petitioner became the successful bidder, for the reasons best known to the respondents 1 and 2, it was not confirmed in his favour and in respect of the second auction also, he participated and it got postponed by the official respondents, without assigning any reason as to the cancellation of the said auction. Again, the respondents 1 and 2 went for re-auction by increasing the upset price of Rs.1.55 crores in which the third respondent became the successful bidder. Since the action of the respondents is utter violation of norms and principles of natural justice, it can easily be presumed that there is fraud and collusion between the official respondents and the successful bidder and hence, he prays for interference of this Court.



5. *Per contra*, learned Counsel appearing on behalf of the respondents 1 and 2 would submit that the points urged by the learned Counsel for the petitioner is purely a disputed question of fact and therefore, this Writ Petition is not at all maintainable and even otherwise, he has got an alternative remedy under Section 17 of the said Act and hence, prays for the dismissal of this Writ Petition.

6. The third respondent, who is the successful bidder, would submit that, that the Bank Officials have already issued the Sale Certificate to him and in order to deprive the fruits of the same, the present Writ Petition has been brought forward in collusion with the other partners and prays for the dismissal of this Writ Petition.

7. This Court has considered the rival submissions of the parties concerned and perused the materials placed before this Court.

8. In the considered opinion of this Court, whether the fraud has been practised or not and whether there is collusion between the respondents 1 and 2 with the rest of the borrowers or not, are all the disputed questions of fact and this Court, exercising its jurisdiction, under Article 226 of Constitution of India cannot venture into the same. As rightly contended by the learned Counsel for the respondents 1 and 2, the petitioner is also having an effective alternative remedy under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and as such, he can avail the said remedy subject to law of limitation. Further, if the petitioner is of the firm view that fraud and collusion has been practised, then Section 34 of the Act is also not a bar to approach the competent Civil forum to work out his remedy.

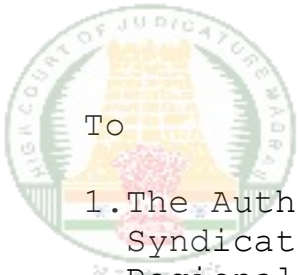
9. In the light of the reasons assigned above and in the light of the facts and circumstances of the case, this Court is of the view that this Writ Petition is not maintainable and therefore, it is liable to be dismissed.

10. In the result, this Writ Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/



To

1.The Authorized Officer,
Syndicate Bank,
Regional Office,
Claret Plaza, Melakkal Main Road,
Madurai-625 016.

2.The Branch Manager/Chief Manager,
Syndicate Bank,
Nagal Nagar Branch,
Dindigul.

+1cc to Mr.M.Karthikeya Venkitachalapathy, Advocate Sr.No. 61484

+1cc to Mr.PTS.Narendravasan Advocate Sr.No. 61077

+1cc to Mr.R.Pandivel Advocate Sr.No. 60960

JAM/08.11.16/GSV-PM/ 4p-6c

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