

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

W.P.No.4725 of 2017

K.Hayath Basha

... Petitioner

vs.

Authorized Officer,
GIC Housing Finance Ltd.,
2nd Floor, Khivraj Complex-2,
Plot No.480, Anna Salai,
Opp.Nandanam Arts College,
Nandanam, Chennai - 600 035.

... Respondent

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the respondent to refund the auction money of Rs.23,50,000/- deposited by me pursuant to auction notice dated 02.07.2012, with interest at 18% p.a from 18.08.2012 to till date of realization.

For Petitioner : Mr.S.T.Raja
for M/S.Om Sai Ram

For Respondent : No Appearance

ORDER

(Order of the Court was made by S.MANIKUMAR, J)

Earlier on 04.10.2017, we recorded here under:-

"At the instance of a third party, Debt Recovery Tribunal - III, Chennai, has allowed S.A.No.231 of 2012, filed challenging the auction sale, on the grounds inter alia that the procedure under Rule 9 (1) of the Security Interest (Enforcement) Rules, 2002, has not been followed, in giving thirty days, clear notice.

2. When the Instant writ petition filed for a mandamus by the auction purchaser, directing the Bank to refund the auction money of Rs.23,50,000/- deposited by the petitioner, pursuant to auction notice, dated 02.07.2012, with interest at 18% p.a., from 18.08.2012 to till date of realisation, came up for hearing, learned counsel for the Bank submitted that being aggrieved by the order made in the abovesaid S.A., appeal has been filed by the Bank before the Debt Recovery Appellate Tribunal, Chennai, and that the same is scheduled for hearing next week. According to the Bank counsel, written submissions have been filed, and that the appeal is likely to be disposed of shortly.

3. Learned counsel for the Bank further submitted that in the event of Bank failing to succeed in the appeal, Bank would be advised to refund the amount. Interest can be decided later.

4. Submission of the learned counsel appearing for the respondent Bank is placed on record.

5. Post on 25.10.2017."

2. Today, Mr.OM.Sai Ram, learned counsel for the petitioner/auction purchaser, submitted that the appeal filed by the bank, before the Debt Recovery Tribunal, Chennai, ended in favour of the bank, thus, confirming the auction sale of the subject property.

3. In the event of sale the normal course of action, would be issuance of sale certificate, but then, the borrower has a right to challenge the order passed by the Debt Recovery Tribunal, Chennai. Once the Bank has succeeded, on the appellate forum, sustaining the auction sale, prayer for mandamus, to refund the auction amount of Rs.23,50,000/-, deposited by the petitioner, pursuant to the auction, dated 02.07.2012, with interest, at the rate of 18% p.a, from 18.08.2012 to till date of realization, cannot be granted, on the basis of the order, made in S.A.No.231 of 2012, on the file of the Debt Recovery Tribunal, Chennai.

4. In view of the above, **Writ Petition is dismissed.** No costs.

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(S.M.K., J) (R.P.A., J)

05.12.2017

Index: Yes/No

Internet: Yes

dm/mvs

S.MANIKUMAR, J.
AND
R.PONGIAPPAN, J.

dm

To

The District Collector/Magistrate,
Cuddalore District,
Cuddalore.



W.P.No.4725 of 2017

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