

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/9/2017

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.13471 of 2017

Ms.V.Shanmathy

...

Petitioner

Vs

1. City Union Bank Limited
rep. By its Authorised Officer
Administrative Office
No.24 B Gandhi Nagar
Kumbakonam 612 001.
2. City Union Bank Limited
rep. By its Manager
Vellore Branch
No.29 Arcot Road (Ida Scudder Road)
Near Murugan Temple
Vellore 632 004.
3. City Union Bank Limited
rep. By its Authorised officer
Chennai Annanagar Branch
No.46 Ground Floor, I Avenue
Near Chinthamani
Annanagar East
Chennai 600 102.
4. G.R.P.Agency

5. Mr.R.Praveen Raj
6. Mr.V.V.Rajan
7. Mrs.R.Geethanjali
8. M/s. Geethanjali Agencies ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorarified mandamus to call for the records of the first respondent's impugned possession notice, dated 31/3/2017 and culminating in its impugned tender-cum-auction sale notice under SARFAESI Act, 2002 bearing C.O/REC/NPA/2017-18 dated 19/4/2017, quash the same in so far as it pertains to and seeks to bring the property, viz., Land and Building at Plot No.15, Union Road, Annamalai Avenue, Nolambur, Chennai 600 095 jointly owned by the petitioner and her family members along with the sixth respondent, for tender-cum-auction sale and to forbear the respondents 1 to 3 and anyone claiming through or under them from invoking SARFAESI proceedings in respect of the said property, except in accordance with law.

For Petitioner ... Mr.Arun Anbumani

For respondent ... Mr.T.K.Ramkumar
for Mr.R.S.Varadarajan
for R.R.1 to 3.

ORDER

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

Daughter of late Mr.V.Venkatesan, a borrower, for the loan availed from City Union Bank, Chennai, has challenged possession notice, dated 31/3/2017, which has culminated into a tender-cum-auction notice, dated 19/4/2017. She has prayed to quash the same, in so far as it pertains to and seeks to bring the property, viz., Land and Building at Plot No.15, Union Road, Annamalai Avenue, Nolambur, Chennai 600 095 jointly owned by the petitioner and her family members along with the sixth respondent and to forbear the respondents 1 to 3 and anyone claiming through or under them from invoking SARFAESI proceedings in respect of the said property, except in accordance with law.

2. Record of proceeding shows that on 24/5/2017, while ordering notice of motion returnable in four weeks, through Court and

privately, a Hon'ble Division Bench of this Court, ordered as hereunder:-

“Notice of motion returnable in four weeks. Private notice is also permitted.

2. The learned counsel for the petitioner would submit that notice under Section 13 (2) of the SARFAESI Act and the impugned sale notice have been issued in the name of dead person. Further, notice under Section 13 (4) has not been served on the petitioner and stated to have been affixed in the property. Even otherwise, the liability that can be attributable to the petitioner is only Rs.40 lakhs. It is further submitted that the subject property has been rented out and the tenant is in occupation of the said property.

3. Considering the above, it is hereby ordered that while the impugned proceedings can go on, there shall not be any sale so far as the house property which stands in the name of the petitioner's father and the sixth respondent is concerned. However, it is made clear that in so far as the liability in respect of respondents 4 to 8 are concerned, the

property stands in the name of the said respondents can be proceeded with.”

3. On receipt of notice, Authorised Officer of the City Union Bank Limited, Kumbakonam, has filed a counter affidavit on behalf of the respondents 1 to 3.

4. Mr.R.S.Varadarajan, learned counsel for the Bank submitted that for realisation of the dues payable by borrowers 4 to 8, Bank will not proceed against the property, in which the writ petitioner is interested and prayed that the Bank be permitted to proceed in respect of other properties.

5. Submission of the learned counsel for the Bank/respondents 1 to 3 is placed on record.

6. In view of the above, writ petition is allowed in part. Possession notice, dated 31/3/2017, culminating in tender-cum-auction sale notice, dated 19/4/2017, is set aside, in so far as property, at Door No.14 Union Road, Annamalai Avenue, Nolambur, Chennai, jointly owned by the petitioner and family members along

with respondent No.6, is concerned. Respondent Bank is at liberty to proceed against other properties. No costs. Consequently, the connected Miscellaneous Petitions are closed.

(S.M.K., J.) (V.B.S., J.)
19th September 2017

mvs.

Index : Yes/No

Internet : Yes/No

To

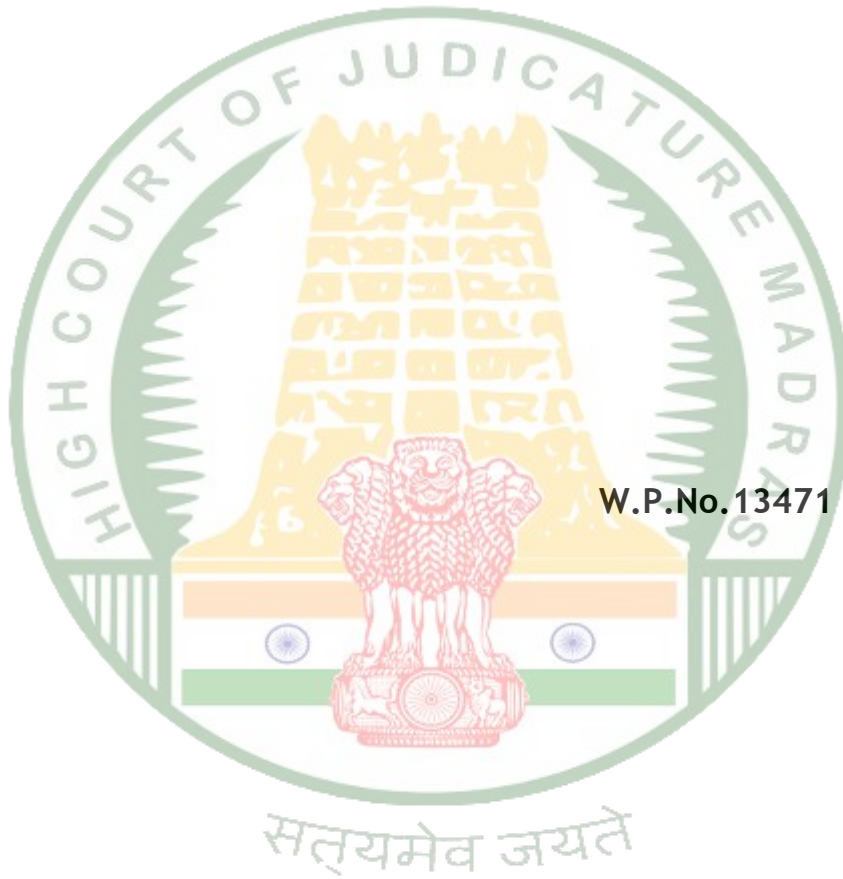
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