

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2017

CORAM:

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

W.P.No.34898 of 2014
and M.P.Nos.1 & 2 of 2014 and 1 of 2015

N.Saravanan ... Petitioner

vs.

1. The Authorised Officer,
Indian Bank,
Velachery Branch,
Chennai - 600 042.

2. Jayanthi Suresh

3. S.Surrender ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari, to call for the records of the impugned proceedings of the 1st respondent sale notice dated 19.11.2014 and quash the same.

For Petitioner : Mr.V.Karthikeyan
for Mr.MA.Gouthaman
For Respondent 1 : Mr.R.Kannan
for Mr.N.Chandra Raj

ORDER

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

Material on record discloses that Mrs.Jayanthi Suresh, the 2nd respondent has taken financial assistance from Indian Bank, Velachery Branch, Chennai. Mr.S.Surrender, 3rd respondent herein, stood as guarantor. Bank has taken measures for recovery. Possession notice dated 04.10.2013, has been challenged by the petitioner in S.A.No.69 of 2013, before the Debts Recovery Tribunal-II, Chennai. On 12.11.2013, interim stay has been granted on condition that the petitioner should pay a sum of Rs.5 Lakhs to the accounts of the borrower, which

the petitioner has complied with. S.A.No.69 of 2013 was heard and vide order dated 06.08.2014, the same has been dismissed. Thereafter, bank has issued a notice dated 10.11.2014 under Rule 6(2) and 8(6) of the Security Interest (Enforcement Rules), 2002, to the borrower as well as the guarantor, informing them that properties mortgaged, would be brought for auction on 19.12.2014. Subsequently, sale notice dated 10.11.2014 published in New Indian Express and Dinamani on 12.11.2014 have been withdrawn and another sale notice dated 19.11.2014 has been issued, and that the same is sought to be quashed, in the instant writ petition.

2. Record of proceedings shows that on 23.12.2014, while ordering notice of motion, a Hon'ble Division Bench of this Court, passed the following orders.

"Notice of motion returnable in three weeks.

As the petitioner is purchaser and the encumbrance certificate has not reflected the loan obtained by the 2nd respondent, who sold the property to the petitioner, there shall be an order of interim stay for a period of three weeks".

Interim order granted on 23.12.2014 has been extended.

3. On this day, when the matter came up for hearing on behalf of the petitioner, Mr.V.Karthikeyan, learned counsel submitted that a sum of Rs.28 Lakhs, has been paid to the Indian Bank, Velachery Branch, Chennai, towards discharging the outstanding loan to be paid by the respondents 2 and 3, borrower/guarantor, respectively. According to Mr.V.Karthikeyan, learned counsel for the petitioner, the said amount has been paid on behalf of respondents 2 and 3.

4. As per the Registry's endorsement, notice sent to respondents 2 and 3, has been returned with an endorsement "vacated", and respondents 2 and 3 are not before this Court, to acknowledge or dispute the said submission that amount has been paid on their behalf and therefore, we only record the submission of the learned counsel for the petitioner and we make it clear that it should not be construed that the Court has accepted his submission. On behalf of Indian Bank, Chennai, Mr.R.Kannan, learned counsel, acknowledges the submission of receipt of payment.

5. Impugned proceedings is the sale notice dated 19.11.2014. In view of the subsequent events, Mr.V.Karthikeyan, learned counsel seeks permission to withdraw the writ petition. He has also made an endorsement to that effect.

6. Placing on record the abovesaid submission and the endorsement made, writ petition is dismissed, as withdrawn. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS V)

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Sub Asst. Registrar

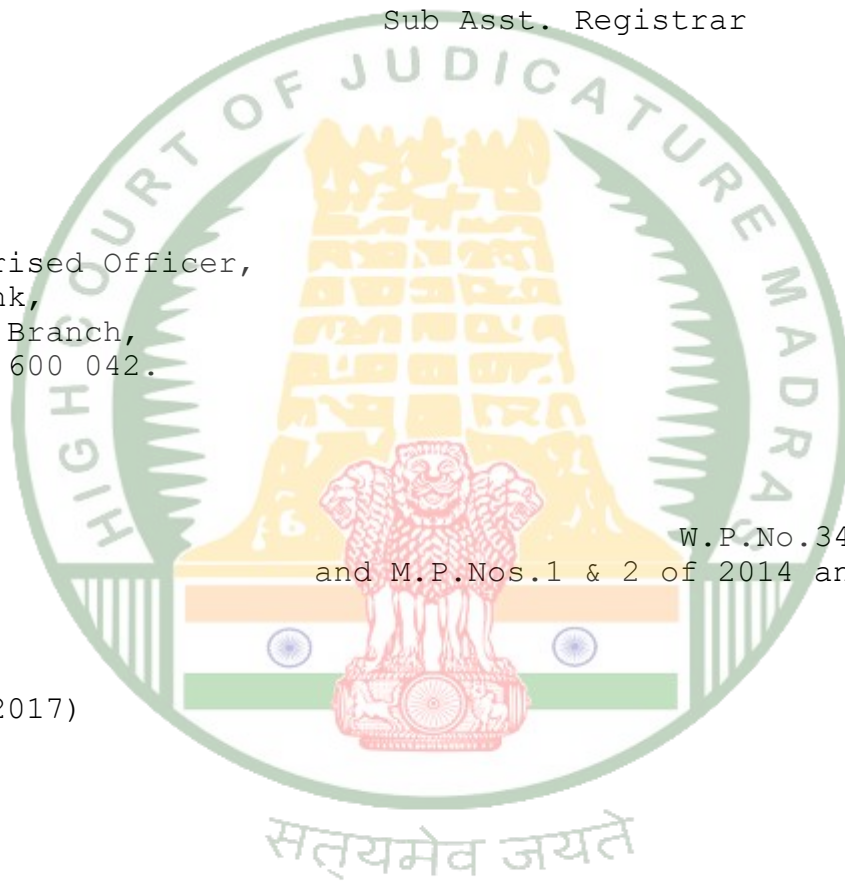
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To

The Authorised Officer,
Indian Bank,
Velachery Branch,
Chennai - 600 042.

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VR(01/09/2017)



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