

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.22487 of 2015

and

M.P.Nos.1 and 2 of 2015

S.A.Piran Malai ... Petitioner

versus

1.The Recovery Officer

Debts Recovery Tribunal Chennai-1

6th Floor, Spencers Towers

770-A, Anna Salai, Chennai - 600 002

2.The State Bank of India

Rep. by its Assistant General Manager

Nungambakkam Branch, Now SAM Branch

Red Cross Society Building, 2nd Floor

No.32, Montieth Road,

Egmore, Chennai - 600 008

3.R.Gopal

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, to call for the records relating to the e-sale No.2/2015 dated 18.06.2015 in DRC No.31/2012 to be held on 30.07.2015 or on any other subsequent dates by the 1st respondent and quash the same.

For Petitioner : Mr.K.S.Sundar

For Respondents : Mr.Suresh, for R2

ORDER

(made by S.MANIKUMAR, J.)

E-Auction Notice No.2/2015 dated 18.06.2015, issued by the Recovery Officer, Debts Recovery Tribunal-I, Chennai is challenged by the petitioner in this writ petition. The third respondent, has availed loan from State Bank of India,

Chennai/respondent No.2 creating mortgage, by deposit of title deeds. Bank has filed O.A.No.916/1999 under Section 31(A) under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 before the Debts Recovery Tribunal - I, which passed final orders dated 29.02.2012. DRC Certificate No.31/2012 has been issued for Rs.65,74,117.11 and interest of Rs.4,33,35,219.30P, third party/writ petitioner has filed W.P.No.35342/2013 before this court. Subsequently, the writ petition was closed as no e-auction notice had taken place. Contending inter alia that without mentioning the encumbrance, in the e-auction notice, as required under Rule 53 of the second schedule to Income Tax Act, 1961, instant e-auction notice issued and therefore, the same is liable to be quashed by issuance of a writ of certiorari.

2. On this day, when the matter came up for hearing, Mr.K.S.Sundar, learned counsel appearing for State Bank of India, Egmore/2nd respondent submitted that there was no sale.

3. In view of the above, we are of the view that nothing survives in the instant writ petition for adjudication. If the sale had taken place as scheduled and due to non-mentioning of encumbrance, and if the petitioner is aggrieved, then it is open to him to challenge before the concerned forum. But, that is not the case. However, we observe that, sale notice should satisfy the requirement of the statutory provisions.

In view of the above, writ petition is dismissed. However, there shall be no order as to cost. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

asr

To

The Recovery Officer
Debts Recovery Tribunal Chennai-1
6th Floor, Spencers Towers
770-A, Anna Salai, Chennai - 600 002

+1cc to Mr.K.S.Sundar, Advocate sr.1371

+1cc to Mr.Sivakumar, Advocate sr.1259

W.P.No.22487 of 2015

lrs(co)
ss(3/2/2017)