

HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2017

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.15620 of 2017 and
W.M.P. No.16915 of 2017

S.Kulandhaisami

..petitioner

Vs.

1. The Registrar,
Co-Operative Societies,
No.170, E.V.R.Periyar Road,
Kilpauk, Chennai - 10.
2. The Registrar of Co-operative
Societies (Housing)
Salem Region,
Salem - 3.
3. The Secretary,
Elamalai Co-operative Housing Society,
Kalingarayapalayam,
Mettunavasuvampalayam,
Bhavani Taluk,
Erode District.

..Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the 2nd respondent's auction Notice dated 09.05.2017 in E.P.No.325/15-16 in case No.1628/03-04 and quash the same. consequently directing the 2nd and 3rd respondents to consider the petition representation dated 26/05/2017 and defer the auction.

For Petitioner : Mr.E.C.Ramesh

For R1 and R2 : Mr.V.Selvaraj,
Additional Government Pleader

ORDER

Learned Additional Government Pleader takes notice on behalf of the respondents. The petitioner has filed this Writ Petition under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the 2nd respondent's auction Notice dated

09.05.2017 in E.P.No.325/15-16 in case No.1628/03-04 and quash the same.

2. According to the learned counsel for the petitioner, in the year 2003, the petitioner along with his mother and his brother, obtained a loan for a sum of Rs.3,50,000/- from the third respondent bank for reconstruction of the petitioner's house based on a mortgage deed and the petitioner agreed to repay the amount with interest at the rate of 16.5% pr annum. The petitioner could not repay the loan properly. The petitioner's mother died on 26.01.2007. The petitioner and his brother had no knowledge about the arbitration proceedings started by the second and third respondent for non repayment of loan and award was passed against the petitioner by the third respondent bank for a sum of Rs.12,39,252/-. Based on the award, an attachment notice was issued by the second respondent on 11.08.2016. The petitioner came to know about the attachment notice only on 11.08.2016. Now, the second respondent has issued auction notice dated 09.05.2017 in E.P.No.325 / 2015-2016 in Case No.1628/03/04 on the petitioner's property which was mortgaged for getting the above loan. Then, the petitioner made a representation to the third respondent bank on 26.05.2017 seeking time to repay the money and requesting to defer the auction. Having not received any reply from the third respondent bank, the petitioner has filed this writ petition.

3. The learned counsel for the petitioner would further submit that due to the failure of monsoon, being an agriculturist, the petitioner could not repay the entire amount and seeks time to repay the outstanding due amount. Further, the learned counsel for the petitioner undertakes that the petitioner will pay a sum of Rs.3,00,000/- to the third respondent bank on or before 02.07.2017 and requests this Court to permit the petitioner to file an objection before the concerned Sale Officer for the remaining outstanding due amount.

4. Considering the above submissions made by the learned counsel for the petitioner, this court is inclined to direct the petitioner to pay a sum of Rs.3,00,000/- (Rupees Three Lakhs only) to the third respondent bank on or before 02.07.2017 and insofar as the remaining outstanding amount is concerned, the petitioner shall make a fresh representation to the Sale Officer concerned under Rule 135 of the Tamil Nadu Cooperative Societies Rules 1988 within one week from today. The Sale Officer shall consider the said representation in accordance with law. If any default in the aforesaid condition by the petitioner, the second respondent is permitted to proceed with the impugned sale notice. As per the above undertaking by the learned counsel for the petitioner, the auction proceedings shall be kept deferred as per Rule 135 of the Tamil Nadu Cooperative Societies Rules 1988.

5. The writ petition is disposed of with above directions. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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1. The Registrar,
Co-Operative Societies,
No.170, E.V.R.Periyar Road,
Kilpauk, Chennai - 10.
2. The Registrar of Co-operative
Societies(Housing)
Salem Region,
Salem - 3.

+1cc to E.C.Ramesh, Advocate in sr.no.43633
+1cc to Government Pleader in sr.no.43806

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NR 22/06/2017



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