

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2017

CORAM

The HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.30812 of 2004

G.Narayanan

.. Petitioner

vs.

1.The Chief Manager,
Indian Bank,
Purasawakkam,
Chennai.

2.The Recovery Officer,
Chennai Debts Recovery Tribunal,
Chennai.

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus calling for the entire records in respect of the Auction Sale proposed to be held on 03.11.2004 vide notice by the second respondent in No.DRC.No.62/2002 and quash the same and consequently direct the first respondent to implement the one time settlement scheme under OTS scheme worked by them in the liberal way by granting reasonable time.

For Petitioner : Mr.D.Rajagopal

For Respondents : Mrs.Rita Chandrasekar
for M/s.Aiyar & Dolia
for 1st respondent

ORDER

This writ petition has been filed, assailing an auction sale notice issued by the second respondent before me i.e., the Recovery Officer, Debts Recovery Tribunal, Chennai. This auction sale notice has been issued under the provisions of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "the said Act" for brevity). It bears reference DRC.No.62/2002, and according to the petitioner, it is dated 03.11.2004 (hereinafter referred to as "impugned order" for the sake of brevity, convenience and clarity).

2. Whether an auction sale notice for sale of the immovable property issued by the second respondent before me, who is the Recovery Officer of Debts Recovery Tribunal, Chennai (hereinafter referred to as "DRT" for brevity) can be questioned in a writ petition itself is a moot point, which requires to be gone into.

3. However, considering the nature of the submissions made, the admitted obtaining position and the order I therefore propose to pass, I refrain to delve further into the above aspect of matter.

4. The sole sheet-anchor point on which the entire writ petition is predicated is that there was a One Time Settlement (hereinafter referred to as "OTS" for brevity, convenience and clarity) between the first respondent Bank and the legal heirs of the borrower and the impugned notice has been issued by the second respondent giving a complete go by to the OTS of Rs.5,00,000/-.

5. Therefore, considering the sole sheet-anchor point on which this writ petition is predicated is the aforesaid OTS. When the matter came up for admission, this Court on 26th October, 2004 passed an order of interim stay (WP.MP.No.37322 of 2004) on condition that the petitioner should pay a sum of Rs.5,00,000/- on or before 03.11.2004 and the said order reads as under:-

"Interim stay on condition the petitioner pays a sum of Rs.5,00,000/- (Rs. Five Lakhs only) on or before 3.11.2004, the auction date, to the first respondent. If such amount has not been paid, it is open to the respondents to proceed with the auction. Notice."

6. The petitioner, admittedly did not pay Rs.5,00,000/- within the above said time frame and moved an application (WP.MP.No.38451 of 2004) for extension of time granted vide aforesaid interim order dated 26th October, 2004. In this application (WP.MP.No.38451 of 2004) for extension of time, the prayer of the petitioner was acceded to partially where this Court said that the auction shall go on, but the bidders shall be informed by the auctioning authority that if the petitioner pays a sum of Rs.5,00,000/-, the auction shall stand cancelled. This is, vide order dated 2nd November, 2004 and it may be useful to extract the same, which reads as under:-

"The petitioner has moved this application for extension of time granted by order dated 26.10.2004 for paying a sum of Rs.5,00,000/- as condition for granting stay. The condition has not been complied with and on the eve of the auction, the petitioner has moved this

application for extension of time. The auction is fixed tomorrow. The respondent's counsel is present. The auction shall go on. The confirmation shall be kept in abeyance. The petitioner is granted time till 30.11.2004 for paying the sum of Rs.5,00,000/-. The bidders shall be informed by the respondent that if the petitioner pays a sum of Rs.5,00,000/-, the auction shall stand cancelled. Post the matter on 01.12.2004."

7. Thereafter also, the petitioner did not pay the admitted sum of Rs.5,00,000/- resulting in this Court dismissing the stay petition being WP.M.P.No.37322 of 2004 dated 29.06.2006. It may be useful to extract the interim order dated 29.06.2006 also, which reads as under:-

"For the purpose of interim order, this Court imposed a condition for payment of Rs.5,00,000/- on or before 03.11.2004 by an order dated 26.10.2004. The petitioner did not comply with the said condition but approached this Court for extension of time. By a subsequent order dated 02.11.2004, this Court granted time till 30.11.2004 for the petitioner to comply with the condition. In fact, in the mean time the respondent has brought the property for auction, this Court directed that the confirmation to be stayed till 30.11.2004.

As the petitioner did not comply with the condition imposed, I am not inclined to grant any further extension and accordingly, this stay petition is dismissed."

8. Today when the matter is taken up for hearing, Mrs.Rita Chandrasekar, learned counsel appearing on behalf of the first respondent would submit that even as on date, the petitioner has not paid the above said sum of Rs.5,00,000/-, which according to the petitioner is OTS amount and as alluded supra, this is the sole pivotal point on which the petitioner has predicated this writ petition.

9. Owing to all that have been stated supra, there is no scope whatsoever for giving any relief to the petitioner in the instant writ petition.

10. The writ petition fails and the same is dismissed. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To:

1.The Chief Manager,
Indian Bank,
Purasawakkam,
Chennai.

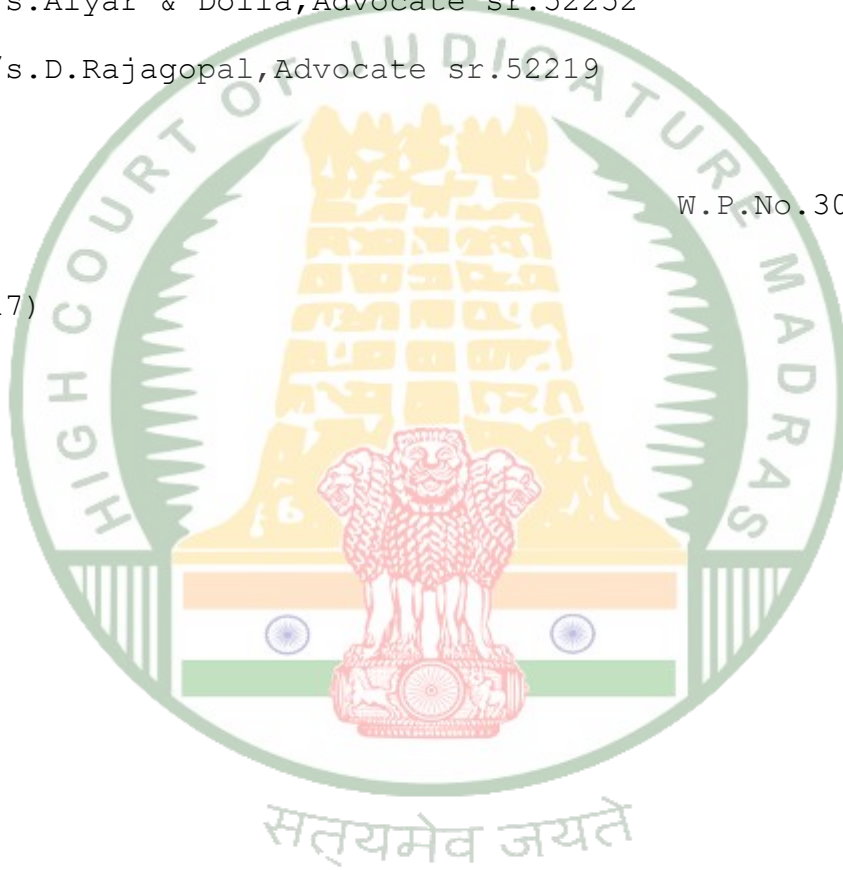
2.The Recovery Officer,
Chennai Debts Recovery Tribunal,
Chennai.

+1cc to M/s.Aiyar & Dolia, Advocate sr.52252

+1cc to M/s.D.Rajagopal, Advocate sr.52219

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rs1(co)
ss(8/8/2017)



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