

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.33593 of 2013 and

MP No.1 of 2013

S.K.Rukmani alias Elizabeth ..Petitioner

Vs.

1. The Deputy Registrar (Loans),
Kuralagam II Floor,
Chennai-600 108.

2. The Chintadripet Cooperative Bank,
Chintadripet,
Chennai-600 002

..Respondents

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records pertaining to the order of attachment and sale notice dated 05.11.2013 and the auction notice dated 05.11.2013 issued by the first respondent and quash the same and direct the first respondent to furnish the copy of the exparte decree and statement of account so as to enable the petitioner to file appeal against the said ex parte decree.

For Petitioner : Mr.P.Anbarasan
For Respondents : Mr.V.Selvaraj, Additional
Government Pleader for R1

: Mrs.T.P.Savitha for R2

ORDER:

According to the learned counsel for the petitioner, the petitioner obtained a loan for a sum of Rs.3,60,000/- from the second respondent bank in 1998 by mortgaging the house situated at No.22-A, Royal Oommar Bahadur III Street, Royapettah, Chennai-14. At first, the instalment amounts were paid properly, but after the death the petitioner's husband, it was done so. However, the petitioner had been paying the instalments at times as demanded by the second respondent bank. While being so, the petitioner received a copy of an order of attachment and sale dated 05.11.2013 with regard to the mortgaged property stating that the date of auction would be 11.12.2013 and the due amount was Rs.18,75,109/-. On receipt of the said notice, the petitioner demanded a statement of account from the second respondent. But, it has not been issued so far. The petitioner has not been issued any notice in arbitration proceedings and execution proceedings. Without furnishing such notices, passing the orders of attachment and sale notice and auction notice are illegal and hence, the petitioner has filed this writ petition praying to quash the notices dated 05.11.2013 and to direct the first respondent to furnish a copy of the decree.

2. According to the learned counsel for the petitioner, the petitioner was not aware of the arbitration proceedings and execution proceedings, if any initiated. Hence, it is understood that without issuing notices, ex parte order has been passed against the petitioner. Moreover, the petitioner is unable to file an appeal without a copy of the ex parte decree. Hence, the petitioner has approached this Court for the above prayer.

3. It is seen from the records that at the time of admission, this Court had granted an interim stay on condition that the petitioner shall pay a sum of Rs.5,00,000/- and the petitioner has also complied the said condition.

4. When the writ petition is taken up today for final disposal, the learned Additional Government Pleader would submit that pursuant to the said order of this Court, no auction was conducted. Further, if the petitioner is aggrieved in this regard, the petitioner can approach the competent authority under Rule 135 of the Tamil Nadu Cooperative Societies Act, 1983 for making objection or claim. Without exhausting the said remedy, filing a writ petition before this Court is not maintainable and liable to be dismissed.

5. Now, the learned counsel for the petitioner undertakes to pay a further sum of Rs.2,00,000/- (Rupees Two Lakhs only) to the second respondent society within a period as fixed by this Court and request this Court to give liberty for making an objection or claim before the authority concerned under the said Rule and also to direct the concerned respondent to defer the recovery proceedings against the petitioner till an order is passed in that petition.

6. In view of the submissions made by the learned Additional Government Pleader, this court is not inclined to entertain the writ petition for the reason that without exhausting the efficacious alternative remedy, the petitioner has approached this Court. However, considering the undertaking, the petitioner is permitted to file an objection or claim petition before the authority concerned on condition that the petitioner shall pay a further sum of Rs.2,00,000/- (Rupees Two Lakhs only) to the second respondent society within a period of six weeks from the date of receipt of a copy of this Order. On complying the said condition by the petitioner, the respondent shall defer the recovery proceedings till an order is passed in the above mentioned petition.

7. The writ petition is dismissed with above observations. Consequently, connected miscellaneous petition is closed. No costs.

sd-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1. The Deputy Registrar (Loans),
Kuralagam II Floor,
Chennai-600 108.
2. The Chintadripet Cooperative Bank,
Chintadripet,
Chennai-600 002

+1CC to M/S. Savitha Advocate SR.NO.55306
+1CC to M/S.P.ANBARASAN Advocate SR.NO.5588
+1CC to GOVERNMENT PLEADER SR.NO.55682

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VC (01/09/2017)