IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 9/10/2017

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE R.SURESH KUMAR

Writ Petition Nos.24990 to 24992 of 2016

C.V.S.Murthy ... Petitioner in W.P.No.24990/2016

V. Suresh Babu ... Petitioner in W.P.No.24991/2016

K.Sudharshan ... Petitioner in W.P.No.24992/2016

Vs

1. Indian Bank
   rep. by the General Manager
   (Recovery Department)
   Having Head office
   No.66 Rajaji Salai
   Chennai 600 001.

2. Indian Bank
   rep. by its General Manager (R & L)
   Nos.254 to 260, Avvai Shanmugam Salai
   Royapettai, Chennai 600 014.

3. Indian Bank
   rep. by its Chief Manager
   ARMB -II Branch, 4th Floor, No.55
   Ethiraj Salai, Egmore
   Chennai 600 008. ... Respondents in all the writ petitions.

Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of a Writ of mandamus, to direct the respondents, to return a sum of Rs.1,27,000/-, 2,74,500/- and Rs.63,250/-, respectively, within the time period stipulated by this Court, with an interest of 18% p.a., from 9/11/2009, till the payment of the same.

For Petitioners in all WP's ... R.Chandrasekar

For respondents in all WP's ... Mrs.G.Sugumari

COMMON ORDER

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

Writ petitioners have sought for a writ of mandamus, to direct the respondents, to return a sum of Rs.1,27,000/-, 2,74,500/- and Rs.63,250/-, respectively, with interest at 18% p.a., from 9/11/2009, till the payment of the same.

2. Opposing the prayers sought for, Chief Manager, Indian Bank, Egmore, Chennai/third respondent, in all the above writ petitions has filed separate counter affidavits.

3. As pleadings and submissions in the above writ petitions are common, all the three writ petitions are taken up together and disposed of by a common order.

4. In the auction brought by Indian Bank, for realising the loan amount, borrowed by M/s. Arun Enterprises, writ petitioners were the successful bidders. They paid 15% of the amount, in addition to 10% of EMD. Details of deposits made in respect of the properties for which the writ petitioners were declared as successful bidders are as follows:-

S.No.	W.P.No.	NAME OF THE PETITIONER	AMOUNT DEPOSITED
1.	24990 of 2016	C.V.S.Murthy	1,27,000/-
2.	24991 of 2016	V. Suresh Babu	2,74,500/-
3.	24992 of 2016	K.Sudharshan	63,250/-

5. According to the petitioners, though they had deposited 25% of the bid amount, on account of interim stay granted by this Court, in O.A.No.606 of 2009 in C.S.No.490 of 2009, dated 17/8/2009, they could not make the balance amount of 75% of the bid amount. Efforts were also made for making payment, but not accepted. Subsequently, the petitioners requested to refund 25% of the sale amount deposited. As the Bank failed to refund, petitioners were constrained to approach the District Consumer Disputes Redressal Forum (South), along with petitions, to condone the delay, in filing the complaint. However, the complaint was not entertained, on the grounds of delay. Left with no other alternative, petitioners have filed writ petitions, seeking for mandamus, as stated supra.

6. Though the Chief Manager, Asset Recovery Management Branch - II, Chennai, has filed separate counter affidavits in each writ petition, averments being same, suffice to extract from one such counter.

7. Chief Manager in his counter affidavit has submitted that the third respondent conducted tender-cum-auction, in respect of sale of the mortgaged property, on 17/8/2009 and received sealed tenders in respect of various plots, situate at Rehmath Nagar, Pappankuppam Village, Gummidipoondi Taluk, Tiruvallur District. 18 plots were sold by way of tender-cum-auction. After receiving 25% of the bid amount, Indian Bank, represented by its Chief Manager AIRMB Branch - II, Chennai, third respondent issued confirmation of sale in respect of 18 plots to various persons including the writ petitioners.

8. Chief Manager, Indian Bank/third respondent has further submitted that as per the conditions of the auction sale 8.75% of the sale price, has to be paid within fifteen days, from the date of confirmation of sale. Sale notice further contains a clause that if the auction purchaser fails to pay the balance 75% of the sale amount, within the stipulated time, 25% of the amount would be forfeited without further notice.

9. Chief Manager, Indian Bank/third respondent has further submitted that on 17/8/2009, Bank was informed that this Court had granted interim stay of all SARFAESI proceedings. Pursuant to stay granted by this Court, Bank could not proceed. However, on 6/7/2010, this Court vacated the interim stay granted. Thereafter, vide letter, dated 10/8/2010, respondent No.3, requested the petitioners to pay the balance 75% of the bid amount, in respect of the plots for which they submitted the tenders, within 15 days from the date of communication. Petitioners, sent a letter, dated 16/8/2010, stating that they were not in a position to arrange the amount, within a short date of 15 days and requested the third respondent to return the amount, deposited by them.

10. Chief Manager, Indian Bank, in his counter affidavit has further submitted that vide letter, dated 26/8/2010, petitioners were requested to pay the balance amount of 75% of the bid amount and that they were also informed that 25% of the bid amount already deposited, cannot be returned. Finally, a notice, dated 1/11/2010 was sent to the petitioners, directing them to pay the balance amount of 75%, on or before 14/11/2010, failing which advance amount paid by them would be automatically forfeited, without any further reference and that the properties for which tenders were submitted, would be brought for re-auction by the third respondent. Chief Manager of Indian Bank/third respondent further submitted that for the legal notice, dated 3/12/2010, sent by the petitioners, a suitable reply, dated 7/1/2011 was given by the third respondent.

11. When the matter stood thus, properties were again brought for auction, on 18/6/2011. The petitioners along with two others sent a letter, dated 7/6/2011 and requested the third respondent, to adjust the payment already made and to

permit them to participate in the auction scheduled, on 18/6/2011. Bank sent a reply, on 14/6/2011, stating that the matter has already been closed.

12. Chief Manager, in his counter affidavit has also stated that the District Consumer Redressal forum, Chennai South, by order, dated 17/4/2015 has also dismissed the claim, on the grounds of delay. Thus, opposing the prayer sought for, Bank has filed counter affidavit that the petitioners, who have failed to remit the balance amount of 75%, despite the time being granted, and when the initial deposit had already been forfeited, mandamus prayed for, should not be granted.

13. Heard the learned counsel for the parties and perused the materials available on record.

14. Payment of initial 25% of the bid amount is not disputed. Sale has also been confirmed and confirmation letter, dated 17/8/2009 has been issued. However, when the Bank was informed of stay of further proceedings, in O.A.No.606 of 2099 in C.S.No.490 of 2009, dated 17/8/2009, Bank did not proceed further. When stay was vacated in the above said proceedings, Bank has sent a letter, dated 10/8/2010, to the writ petitioners, requesting the payment of 75% of the bid amount, within fifteen days from the date of communication, i.e., 25/8/2010.

15. For brevity, letter dated 10/8/2010, is reproduced hereunder:-

> "We wish inform you that the interim order dated 17/8/2009 for not to issue sale certificate by Hon'ble High Court, Chennai was lifted in 6/7/2010. As per the conditions of the sale, balance of 75% of the bid amount i.e., Rs.1,89,750/- is to be paid within 15 days from the date of this communication i.e., 25/8/2010. Please arrange to pay the same within the stipulated time, failing which the bid amount paid by you will be forfeited without further notice and the sale will be cancelled."

16. Responding to the said letter, dated 10/8/2010, writ petitioners have sent a reply, stating that they are not in a position, to arrange the amount, within a short time of 15 days. They have requested to refund 25% of the amount. Subsequently, Bank, vide letters, dated 26/8/2010, 1/11/2010, repeatedly have called upon the petitioners, to remit the balance 75% of the bid amount, failing which initial bid amount of 25% would be forfeited, as per the terms and conditions of the auction sale. Ultimately, on 1/11/2011, Bank has issued a final notice, stating that if the balance amount of 75% was not paid before 14/11/2010, the advance

payment being 25% of the sale price would automatically stand forfeited, without any further reference to the petitioners and that the property would be brought for auction.

17. For brevity letter dated 1/11/2010 issued to the petitioners is extracted hereunder:-

> "We refer to our letter dated 17/8/2009 confirming the sale in your favour and our letter dated 10/8/2010, advising you to pay balance 75% of sale price, amounting to Rs.1,90,500/- on or before 25/8/2010, in respect of the following property.
>
> Brief description of the property:
>
> All that piece and parcel of land, bearing Plot No.19, admeasuring to an extent of 2400 Sq.ft., situated at S.No.323 at Rehmath Nagar, Pappankuppam Village, Gummidipoondi Taluk, Tiruvallur District with the Sub-Registration District of Gummidipoondi.
>
> You have not paid the balance sum of Rs.1,90,500/- as said above till date. Final notice is hereby is given to you to pay the said sum of Rs.1,90,500/- on or before 14/11/2010, failing which the advance payment of Rs.63,500/- (being 25% of sale price) paid by you, earlier will automatically stand forfeited without any further reference to you and the said property shall be brought for auction by the bank afresh.
>
> Please note that this letter is without prejudice to the rights of the Bank."

18. Thereafter, legal notice, dated 3/12/2010 has been sent, on behalf of the petitioners, to the authorised officer/Chief Manager, Asset Recovery Management Branch - II, Chennai, seeking refund of 25% of the amount deposited. Subsequently, when the properties were brought for auction, vide letter, dated 7/6/2011, petitioners have requested the Bank either to arrange payment of 25% of the bid amount or to participate in the auction scheduled on 18/6/2011. Vide letter, dated 14/6/2011, Bank has rejected the said request, as hereunder:-

> "We inform you that we had already communicated to you in this regard vide our various letters dated 17/8/2009, 10/8/2010 & 1/11/2010 and in the personal discussions with you on various occasions. A detailed letter dated 7/1/2011 was also sent to you through our Advocate, on receipt of your Advocate's notice, dated 3/12/2010."

19. Thereafter, the petitioners have approached the District Consumer Disputes Redressal, Chennai North, by filing a complaint, which has been dismissed, on the ground of delay. Thus, from the above, it could be deduced that as early as on 1/11/2010 itself, Bank has made clear that if the balance amount of 75% is not paid before 14/11/2010, the same would automatically stand forfeited, without any further reference and that property would be brought for auction by the Bank afresh. When the amount stood forfeited on 14/11/2011, petitioners have not challenged the decision of forfeiture. Thereafter, when the petitioners made a request for adjusting the bid amount of 25% paid, pursuant to the tender-cum-auction held on 17/8/2009 and that the same was also not accepted. Thus, forfeiture has reached finality in 2020 itself and the further request to adjust the amount has also been turned down. When there is an order of forfeiture, without their being any challenge to the same, the petitioners have filed the instant writ petitions, for a mandamus.

20. It is well settled that mandamus cannot be issued to unsettle any proceedings which has reached finality. Correctness of an order of forfeiture can be tested only in a writ of certiorari and there cannot be a collateral challenge to a proceeding, in a writ of mandamus. Even taking it granted that the writ petitioners were aggrieved over forfeiture or non-refund of bid amount of 25%, petitioners should have approached this Court, within a reasonable time.

21. What is the reasonable time, to approach a writ Court is explained by the Hon'ble Supreme Court Veerayeeammal Vs. Seeniammal reported in {2002 (1) SCC 134}, wherein at paragraph 13 is as follows:-

> "13. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means, as soon as circumstances permit. In P. Ramanatha Aiyar's The Law Lexicon it is defined to mean:
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> "A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under

the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea."

22. Amount stood forfeited on 14/11/2011. Writ petitions have been filed in the year 2016. There is an inordinate delay. Remedy under Article 26 is an extraordinary and equitable. On the facts and circumstances of this case, delay defeats equity.

23. In the light of the discussion and decisions, mandamus cannot be issued. Accordingly, instant writ petitions are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The General Manager,(Recovery Department)
Indian Bank,Having Head office No.66,
Rajaji Salai,Chennai 600 001.

2. The General Manager (R & L)
Indian Bank,Nos.254 to 260,
Avvai Shanmugam Salai,
Royapettai,Chennai 600 014.

3. The Chief Manager
Indian Bank, ARMB -II Branch
4th Floor, No.55
Ethiraj Salai,Egmore,
Chennai 600 008.

+3cc to Mr.R.SivaKumar, Advocate,S.R.No.72163, 72164 and 72165

W.P.Nos.24990 to 24992 of 2016

NMI(CO)
GN(06/11/2017)