

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.Nos.30525 & 30602 of 2016
and
WMP Nos.26460 & 26531 of 2016

W.P.No.30525 of 2016

D.Babu

... Petitioner

vs.

1. M/s. Punjab National Bank,
rep. by its Chief Manager,
Anna Nagar Branch,
U10, 4th Main Road, Anna Nagar,
Chennai - 600 040.

2. M/s.Pablo Earth Moves & Excavators,
No.119, Door No.4, Thiruvallieswar Nagar,
V.V.Koil Street, Anna Nagar West,
Chennai - 600 040.

and also at Plot No.26,
Lakshmi Khanthammal II Street,
Rajiv Nagar Annex, Ram Enclave, Noombal,
Chennai - 600 077.

3. P.David

4.C.Paneerselvam

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, forbearing the 1st respondent bank from conducting auction of the property comprised in S.No.206/1,2,3 as per Patta No.50.88, S.No.206/1E2- situated at Western Portion of 2418 Sq.ft., i.e., 1209 Sq.ft., at Door No.5/516, Kalyanasundaranar Street, Vivekananda Nagar, Kakkular Village, Thiruvallur Taluk.

For Petitioner : Mr.V.Jeyarani

For Respondents : Mr.Umasuthan (for R1)

W.P.No.30602 of 2016

C.Paneerselvam

... Petitioner

vs.

1. M/s. Punjab National Bank,
rep. by its Chief Manager,
Anna Nagar Branch,
U10, 4th Main Road, Anna Nagar,
Chennai - 600 040.

2. M/s.Pablo Earth Moves & Excavators,
No.119, Door No.4, Thiruvallieswar Nagar,
V.V.Koil Street, Anna Nagar West,
Chennai - 600 040.

and also at Plot No.26,
Lakshmi Khanthammal II Street,
Rajiv Nagar Annex, Ram Enclave, Noombal,
Chennai - 600 077.

3. P.David

4. D.Babu ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, forbearing the 1st respondent bank from conducting auction dated 1.9.2016 of the property situated at Plot No.7, Door No.2, Thiruvallur Street, Bharathi Nagar, comprised in Survey No.148/7, as per patta T.S.No.17/2, Ward I Block-12, Selaiyur Village, Tambaram Taluk, Kancheepuram District measuring 1320 sq.ft. alongwith passage measuring 570 Sq.ft., totally measuring 1890 Sq.ft.

For Petitioner : Mr.V.Jeyarani for
M/s.P.Alagar Bose

For Respondents : Mr.Umasuthan (for R1)

COMMON ORDER

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

In W.P.No.30525 of 2016, D.Babu, partner of 2nd respondent company sought for a writ of mandamus, forbearing the 1st respondent bank from conducting auction of the property comprised in S.No.206/1,2,3 as per Patta No.50.88, S.No.206/1E2- situated at Western Portion of 2418 Sq.ft., i.e., 1209 Sq.ft., at Door No.5/516, Kalyanasundaranar Street, Vivekananda Nagar, Kakkular Village, Thiruvallur Taluk.

2. In W.P.No.30602 of 2016, guarantor of 2nd respondent company has sought for writ of mandamus, forbearing the 1st

respondent bank from conducting auction dated 1.9.2016 of the property situated at Plot No.7, Door No.2, Thiruvallur Street, Bharathi Nagar, comprised in Survey No.148/7, as per patta T.S.No.17/2, Ward I Block-12, Selaiyur Village, Tambaram Taluk, Kancheepuram District measuring 1320 sq.ft. alongwith passage measuring 570 Sq.ft., totally measuring 1890 Sq.ft.

3. As both the writ petitions relate to sale of the properties mortgaged, they are taken up together and disposed of by a common order.

4. Earlier, on 1st September 2016, in W.P.No.30525 of 2016 a Hon'ble Division Bench of this Court, while ordering notice, granted interim stay of the auction subject to the petitioner therein depositing a sum of Rs.10 Lakhs with Punjab National Bank, Chennai within a period of four weeks failing which, interim stay would stand automatically vacated. On the same day, similar order has been passed in W.P.No.30602 of 2016.

5. On this day, when the writ petitions are listed for further hearing, Mr.V.Umasuthan, learned counsel for Punjab National Bank, Chennai submitted that both the writ petitioners have not complied with the orders dated 01.09.2016 made in the above writ petitions. He further added that auction fixed on 01.09.2016, did not take place. He submitted that nothing survives in the writ petitions.

6. Learned counsel for the bank further submitted that possession notice dated 02.06.2016 issued under Section 13(4) of the SARFAESI Act, 2002, is challenged in S.A.No.356 of 2016 on the file of Debts Recovery Tribunal-III, Chennai, by the borrower and guarantor, respectively. The said SA has been dismissed on 06.10.2016 and no appeal has been filed as against the said order.

7. Writ petitioners/partner and guarantor of the borrower-M/s.Pablo Earth Movers & Excavators, Chennai have not complied with the interim orders. Stay granted is automatically vacated. They are not entitled to seek for a mandamus. Auction notice can always be challenged before the tribunal under Section 17(1) of the SARFAESI Act, 2002. Though, prayer has become infructuous in law, writ petitioners are not entitled to seek for a mandamus and hence, both the writ petitions are dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

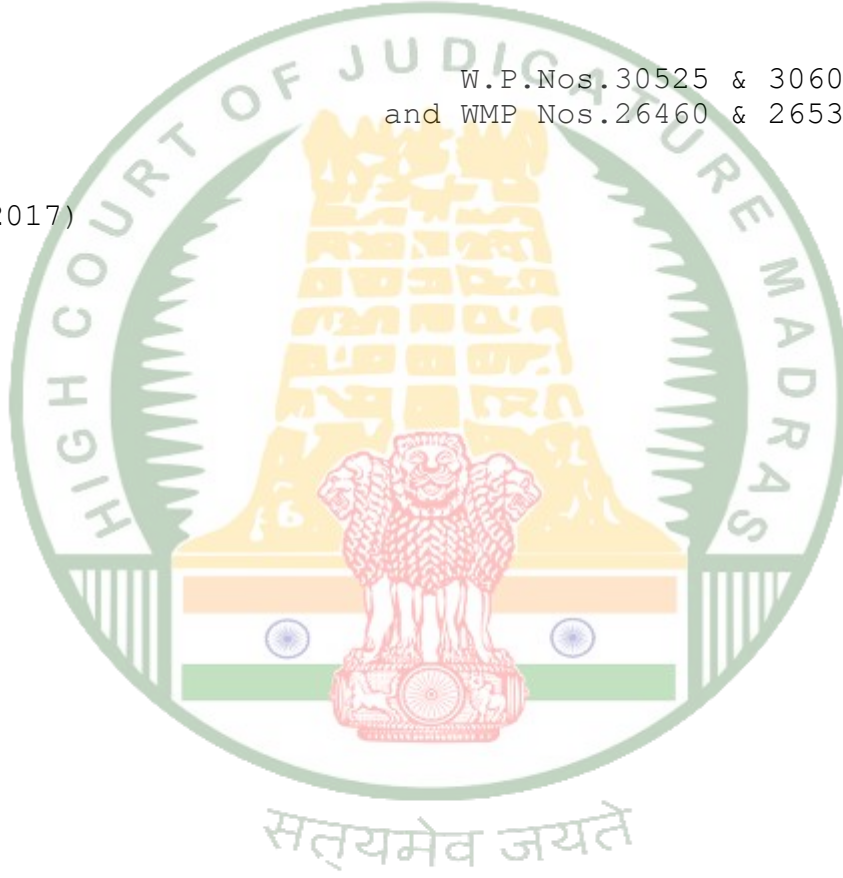
To

The Chief Manager,
M/s. Punjab National Bank,
Anna Nagar Branch,
U10, 4th Main Road, Anna Nagar,
Chennai - 600 040.

+1cc to Mr.P.Alagar Bose, Advocate, S.R.No.55575
+1cc to Mr.V.Jayarani, Advocate, S.R.No.55576
+1cc to Mr.R.Umasuthen, Advocate, S.R.No.55968

W.P.Nos.30525 & 30602 of 2016
and WMP Nos.26460 & 26531 of 2016

NM(CO)
GN(24/08/2017)



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