

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 23.08.2017
CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No.26749 of 2003
and
W.M.P. No.32676 of 2003

M. Ponnuchamy

..Petitioner

Vs.

1. The Special Officer,
Sree Anasuya Benefit
Fund Limited
No.18, East Coast Road
Thiruvannmiyur
Chennai - 600 041.

2 The Kaqtariya & Co.,
Govt. Approved Auctioneer
& Estate Agents
Old No.34, New No. 67
Arunachala Naicken Street
Chintadripet
Chennai - 600 002.

..Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents from bringing the petitioner's property at Old No. 1/90, New No.137, Rajiv Gandhi Road, East Coast Road, Kanathur, Kancheepuram District for the default of loan amount and with the further direction to permit the petitioner to pay the true balance amount on instalments basis and pass such further orders .

For Petitioner : Mr. P. Murugan
For Respondents : No Appearance

O R D E R

The petitioner has filed this writ petition seeking to forbear the respondents from bringing the petitioner's property at Old No. 1/90, New No.137, Rajiv Gandhi Road, East Coast Road, Kanathur, Kancheepuram District for public auction, towards the default of loan amount and with the further direction to permit

the petitioner to pay the true balance amount on instalments basis.

2. Brief facts of the case is as follows :-

The petitioner borrowed a loan of Rs.4,90,000/- from the 1st respondent for construction of a house during the year 2000, by mortgaging his aforesaid property, as a surety to obtain the loan. Though the loan was obtained for constructing a house, he spent major part of his loan towards his son's studies. Hence, the petitioner was unable to repay his loan regularly. Whiles, the 1st respondent issued a demand notice directing the petitioner to repay a sum of Rs.6,33,929/- without taking into account the amount repaid by him. Hence, the petitioner approached the 1st respondent and he granted one year time to settle the entire loan amount and the petitioner also paid a sum of Rs.10,941/- and Rs.20,000/-. However, without properly deducting the amount of Rs.2,90,000/- paid by the petitioner upto July 2003, on 08.09.2003 the 2nd respondent issued the auction notice bringing the property for public auction sale. According to the petitioner, without considering his representation dated 11.09.2003 seeking time to settle the balance due amount, the respondents have initiated auction proceedings. Therefore, challenging the auction sale notice, the petitioner has filed this Writ Petition.

3. In the light of the decision rendered by the large Bench judgment of this Hon'ble Court in the case of K.Marappan v. Deputy Registrar of Cooperative Societies, (2006) 4 MLJ 641, this writ petition is not maintainable and the same is liable to be dismissed.

4. At the time of admission, interim order was granted by this Court, on condition that the petitioner deposits Rs.4,00,000/- to the first respondent, within a period of six weeks from the date of receipt of a copy thereof. Further, the impugned sale notice is issued in the year 2003.

5. Considering the above submissions made by the learned counsel for the petitioner and the decision cited supra, this court is not inclined to entertain the prayer of the petitioner and hence, the writ petition is dismissed as not maintainable. However, liberty is granted to the petitioner to approach to the respondent society, if so advised.

6. Accordingly, the writ petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VIII)

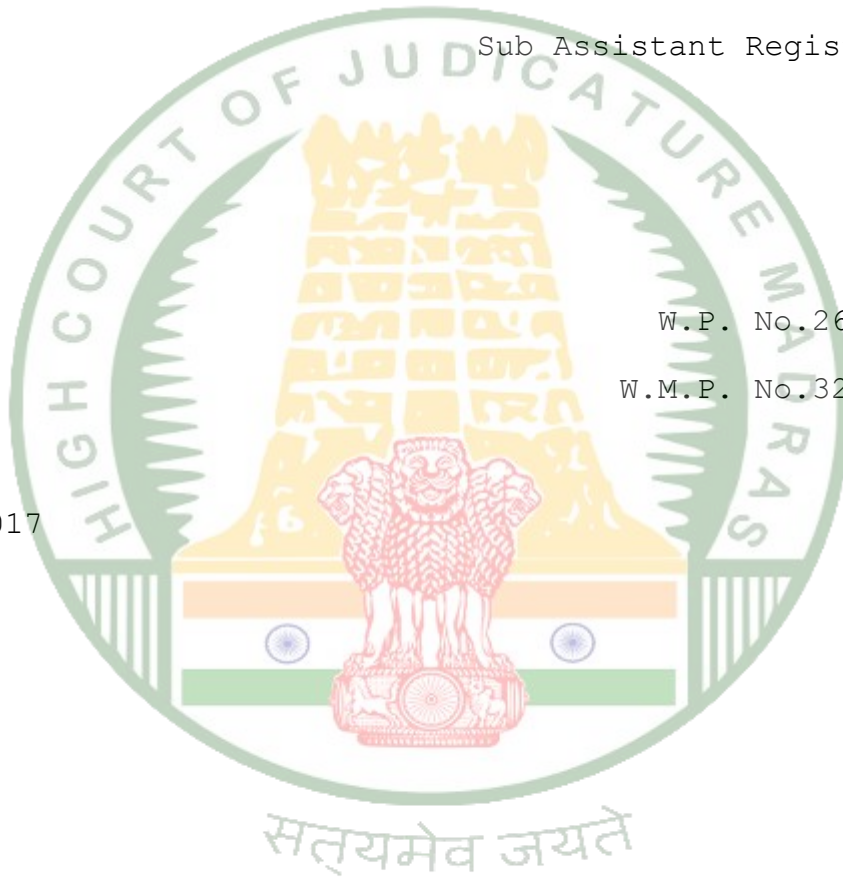
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Sub Assistant Registrar

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and
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