

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2017

CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 36989 of 2003

and

WMP No. 44910 of 2003 & 670 of 2004

N. Prakash

..Petitioner

Vs.

1.The Registrar
Co-operative Societies,
Kilpauk,
Chennai - 10.

2 The Special Officer,
Tamil Nadu Industrial
Co-operative Bank Ltd.,
C.M.D.A. Building,
Gandhi Irwin Road,
Egmore,
Chennai - 600 008.

3 The Branch Manager,
Tamil Nadu Industrial
Co-operative Bank Ltd.,
60-B, Arcot Road,
Vellore.

..Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the 2nd respondent pertaining to the auction notice published in the 'Dhina Thanthi' dated 30.11.2003, in so far as Serial No.12 is concerned and quash the same.

For Petitioner : Mr. G.Jeremiah

For Respondents : Mr.V.Selvaraj
Addl. Government Pleader R1

Mr.L.P.Shanmuga Sundram
Spl. Government Pleader R2 & R3

O R D E R

The petitioner has filed this writ petition seeking to quash the auction notice issued by the 2nd respondent, published in the 'Dhina Thanthi' dated 30.11.2003, in so far as Serial No.12 is concerned.

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

The petitioner borrowed a loan of Rs.85,000/- from the 3rd respondent Bank, for purchase of a Computer. The petitioner's father executed a mortgage deed on his residential house, as a surety to obtain the loan. The said computer was purchased through respondents 2 and 3 but soon the computer became non-functional. Since the petitioner was unable to get any further financial assistance, he was compelled to wind up his business, at a considerable loss. Whiles, the petitioner received a copy of an auction notice, published in Dhina Thanthi dated 30.11.2003, directing the petitioner to repay the entire loan outstanding amount of Rs.1,28,634/- and in the event of non-payment, the house would be sold by public auction.

3. The learned counsel for the petitioner submitted that Section 90 of the Tamil Nadu Co-operative Societies Act, 1983, provides for Arbitration and only after an award is passed, the auction notice on the property mortgaged can be issued. Therefore, challenging the auction sale notice, the petitioner has filed this Writ Petition.

4. The learned counsel for the 2nd respondent would submit that this writ petition is not maintainable, 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 and hence is liable to be dismissed.

5. Considered the rival submissions of the learned counsel for both the parties and perused the material available on record.

6. At the time of admission, interim order was granted by this Court, on condition that the petitioner deposits 50% of the amount as demanded, within a period of eight weeks from the date of receipt of a copy thereof. Further, the impugned sale notice is issued in the year 2003.

7. In view of the above and in the light of the decision rendered by the large Bench judgment of this Hon'ble Court in the case of K.Marappan, the writ petition is liable to be dismissed.

8. Therefore, the Writ Petition is dismissed, with liberty to proceed further, in accordance with law. Consequently, the connected M.Ps are closed. No costs.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

avr

To

1.The Registrar of Co-operative Societies,
Kilpauk, Chennai - 10.

2 The Special Officer,
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Egmore, Chennai - 600 008.

3 The Branch Manager,
Tamil Nadu Industrial
Co-operative Bank Ltd.,
60-B, Arcot Road,
Vellore.

+1cc to Mr.G.Jeremiah, Advocate sr.48495

+1cc to Government Pleader sr.48422

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ss(12/9/2017)