IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.4519 of 2018
and
W.M.P. No.5562 of 2018

C.Natarajan .. Petitioner

versus

1.The Authorised Officer
State Bank of India,
Stressed Asset Management Branch
No.1112, 1st Floor, Raja Plaza
Avinashi Road
Coimbatore - 641 037

2.M/s.Stallion Knitwear India Private Ltd.,
Represented by its Managing Director
Mr.K.A.S. Thierumurthy
Door No.27, Appachi Nagar
Extension 3rd Street
Kongu Nagar, Tiruppur - 641 607 .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, for a writ of certiorarified mandamus calling for the records in letter No.SAMB/CBE/CLO-II/2175 dated 24.10.2017 of the 1st respondent and quash the same and direct the 1st respondent to permit the petitioner to deposit the balance auction sale amount of Rs.92,25,000/- within the time fixed by this Hon'ble court.

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For Petitioner : Mr.M.Peer Mohamed

For Resondents : Mr.G.Senthil Kumar for R1
for Mr.S.Sethuraman

ORDER
(Made by S.MANIKUMAR, J.)

Challenge in this writ petition is to the letter dated 24.10.2017 issued by State Bank of India, Coimbatore, respondent

No.1, forfeiting a sum of Rs.30,75,000/-, 25% of the bid amount, paid by the auction purchaser/writ petitioner.

2. Short facts leading to the filing of the writ petition are that the writ petitioner is carrying on business under the name and style of M/s.Stencil Apparels. He was in search of suitable additional accommodation and machinery for expanding his business. At that time, he saw an advertisement for e-auction sale notice dated 22.08.2017 of the plant and machinery (dying and printing) issued by the first respondent/bank herein.

3. He further contended that the plant and machinery sought to be sold in the public auction was owned by the second respondent herein, who has defaulted in repayment of the loan dues to the first respondent. On satisfying with the plant and machinery to be sold and the reserve price for the same being a sum of Rs.1,22,00,000/-, petitioner participated in the e-auction held on 15.09.2017 and he was declared as the highest bidder, for a sum of Rs.1,23,00,000/- by the first respondent. He paid Rs.30,75,000/- towards 25% of the bid amount by way of RTGS and demand draft, to the first respondent. He was advised to pay Rs.92,25,000/- towards the balance 75% of the bid amount on or before 29.09.2017. Since he could not arrange for the funds from his sources, he wrote a letter dated 27.09.2017 to the first respondent herein, seeking extension of time for payment of balance 75% of the bid amount by 25 days. By letter dated 28.09.2017, the first respondent extended the time for payment of the balance bid amount till 23.10.2017. When he made the balance amount ready and was about to make the payment to the first respondent/bank, he received a notice dated 10.10.2017 from the DRT, Coimbatore intimating him that M/s.Stallion Knitwear India Private Ltd., Tiruppur, namely the second respondent herein, has filed S.A. No.289/2017 challenging the auction sale and that I.A. No.1930/2017 filed by him for deposit of the sale amount by himself, would be taken up for hearing on 06.11.2017.

4. It is the further contention of the petitioner that he contacted the Authorised Officer of the first respondent/bank in person and informed him about the receipt of the notice from the DRT, Coimbatore. The authorised officer informed him that the bank will take care of the case and that he need not worry about the same. He further contended that he has engaged a counsel to defend him in S.A. No.289/2017. The petitioner sent a letter dated 20.10.2017 to the first respondent bank seeking further extension of time by 15 days to pay the balance, by citing the above said notice received from the Debts Recovery Tribunal, Coimbatore. The first respondent/bank rejected the request of the petitioner vide its letter dated 21.10.2017 and

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directed the petitioner to pay the balance amount of Rs.92,25,000/- on or before 23.10.2017.

5. It is the further contention of the petitioner that the petitioner filed an interlocutory application in I.A. No.2125 of 2017 before the Debts Recovery Tribunal, Coimbatore to advance the hearing in S.A. No.289 of 2017. He filed another application in I.A. No.2126 seeking extension of time to deposit the balance auction sale amount of Rs.92,25,000/- till the disposal of I.A. No.1930/2017 filed by the second respondent. The Debts Recovery Tribunal, Coimbatore, advanced the hearing date from 06.11.2017 to 31.10.2017. On 31.10.2017, the Presiding Officer, DRT, Coimbatore, after hearing all the parties concerned, passed an interim order in I.A. No.1930/2017 directing the first respondent bank to maintain status quo and posted the case to 28.11.2017 for filing counter.

6. In the meanwhile, the 1st respondent/bank sent a letter No.SAMB/CBE/CLO-II/2175 dated 24.10.2017 informing that the e-auction sale held on 15.09.2017 and concluded in his favour, was cancelled and that the amount of Rs.30,75,000/- paid by him being 25% of the bid amount, stood forfeited.

7. Challenging the status quo order of the DRT, Coimbatore dated 31.10.2017 made in I.A. No.1930/2017 in S.A. No.289/2017, the first respondent/bank has filed M.A. (S.A.) No.208/2017 on the file of the Debts Recovery Appellate Tribunal, Chennai. On 12.12.2017, the Debts Recovery Appellate Tribunal, Chennai, without serving notice to the petitioner and without giving an opportunity of being heard, permitted the first respondent/bank, to proceed with the next auction, without vacating the order of status quo passed in I.A. No.1930/2017.

8. It is the further contention of the petitioner that after the above said order, the first respondent/bank, hurriedly issued fresh e-auction Sale Notice dated 15.12.2017, fixing the next date of auction as 05.01.2018 and published the same on 18.12.2017. Writ petitioner has filed S.A. No.405 of 2017 on the file of the Debts Recovery Tribunal, Coimbatore challenging the said e-auction sale notice dated 15.12.2017 and filed I.A. No.2542 of 2017 for staying all further proceedings in pursuance thereof. The learned Presiding Officer, DRT, Coimbatore, heard both sides in I.A. No.2542 of 2017 and passed an order on 03.01.2018 dismissing the application, mainly by relying on the interim order of DRAT, Chennai dated 12.12.2017 passed in M.A. (S.A.) No.208/2017, however, the petitioner was granted liberty to participate in the e-auction proposed to be held on 05.01.2018.

9. It is the further contention of the petitioner that,

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after passing the order dated 03.01.2018 in I.A. No.2542 of 2017, petitioner sent a letter dated 05.01.2018 to the bank to permit him to participate in the e-action to be held on that date, with a request to treat the amount of Rs.30,75,000/- already paid by him as Earnest Money Deposit, for the next auction and to permit remitting the balance bid amount within the time fixed by the 1st respondent. The 1st respondent sent a reply dated 11.0.2018 informing the petitioner that, as the e-auction scheduled on 05.01.2018, had already failed for want of bidders, and there is no scope for his participation, and that his other requests, cannot be acceded to as the same is not as per the provisions of the SARFAESI Act, 2002.

10. It is the further contention of the petitioner that he did not remit the balance sale consideration of Rs.92,25,000/- before 23.10.2017, due to the fact that the second respondent has filed S.A. No.289 of 2017 challenging the e-auction sale dated 15.09.2017 in favour of the petitioner and that the borrower has filed I.A. No.1930 of 2017 for deposit of the sale amount by himself, which was to be taken up for hearing on 06.11.2017. Petitioner has further submitted that he took sincere efforts to advance the hearing of I.A. No.1930 of 2017 by filing an interlocutory application in I.A. No.2125 of 2017 before the Debts Recovery Tribunal, Coimbatore. He further contended that the first respondent should have granted further extension of time as prayed for, in his letter dated 20.10.2017 till the disposal of I.A. No.2125 of 2017, as provided in Rule 9 (4) of the Security Interest (Enforcement) Rules, 2002. But the bank has acted hastily and rejected his petition by letter No.SAMB/CBE/CLO-II/2175 dated 24.10.2017 and that the bank has unjustly cancelled the e-auction sale held on 15.09.2017 and concluded in favour of the petitioner, and forfeited the sum of Rs.30,75,000/- paid towards 25% of the bid amount and gained unlawful enrichment. Hence the petitioner has approached this court with the instant writ petition for the relief aforestated.

11. Mr.M.Peer Mohamed, learned counsel for the writ petitioner made submissions on the above averments.

12. On 28.02.2018, when the writ petition came up for hearing, we passed the following order:

> "Letter, dated 24.10.2017, of State Bank of India, Coimbatore, respondent No.1, forfeiting a sum of Rs.30,75,000/-, 25% of the bid amount, paid by the auction purchaser/writ petitioner is challenged.
>
> 2. Inviting the attention of this court to Rule 9(4) of the Security Interest (Enforcement) Rules, 2002, Mr.M.Peer Mohamed, learned counsel for the petitioner submitted that the bank has not granted three months time, to make payment of the balance

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amount of 75% of the bid amount, i.e. Rs.92,25,000/-.

3. Learned counsel for the petitioner further submitted that when the auction purchaser has filed I.A. No.1930 of 2017, in S.A. No.289 of 2017, seeking permission to deposit a sum of Rs.1,23,00,000/-, Debts Recovery Tribunal, Coimbatore, has ordered notice and directed status quo to be maintained.

4. Being aggrieved against the said order, bank has filed M.A. (S.A.) No.208 of 2017, before the Debts Recovery Appellate Tribunal, Chennai, to stay the order dated 31.10.2017 made in I.A. No.1930 of 2017 in S.A. No.289 of 2017, on the file of the Debts Recovery Tribunal, Coimbatore.

5. Subsequently, on 12.12.2017, when M.A. (S.A.) No.208 of 2017 came up for further hearing before the Debts Recovery Appellate Tribunal, Chennai, learned counsel for the bank has sought for permission to proceed with fresh sale, on the basis of a new sale notice to be issued shortly and taking note of the same, the Debts Recovery Tribunal, Chennai, had observed that there is no need, to seek for any permission, for sale in future and so saying, directed the Registry of the Appellate Tribunal, to post M.A. (S.A.) No.208 of 2017, on 05.02.2018. Thereafter, property was sought to be auctioned, on 05.01.2018.

6. Sale notice, dated 15.12.2017, published on 18.12.2017, fixing the sale, on 05.01.2018 was sought to be stayed, in I.A. No.2542 of 2017 in S.A. No.405 of 2017, by the auction purchaser, before the Debts Recovery Tribunal, Coimbatore. However, request for stay, has been denied by the Debts Recovery Tribunal, Coimbatore, on the ground that the Appellate Tribunal, Chennai, had already observed that there is no need to seek for permission, to bring the property for sale.

7. The petitioner, who has made an attempt to get an order of stay of further e-auction sale notice, dated 15.12.2017, stated supra, has now come forward with the instant writ petition, challenging the order of forfeiture, dated 24.10.2017.

8. On the facts and circumstances of the case, we are of the view that any auction of the subject property mortgaged, would again invite a third party to the lis, when the borrower has already filed I.A. No.1930 of 2017, seeking permission to deposit Rs.1,23,00,000/-, being the highest bid amount. Need to consider the right of redemption and that of the auction purchaser is required to be adjudicated.

9. Issue notice to the respondents through court and privately returnable by 22/3/2018."

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13. Upon receipt of notice, bank has entered appearance. Mr.G.Senthilkumar, learned counsel, appearing for the bank contended that the interest of the bank should be taken care of. Though notice was ordered to the second respondent, no one has chosen to enter appearance.

14. On this day, when the matter came up for hearing in the forenoon, Mr.M.Peer Mohamed, learned counsel for the petitioner, submitted that subsequently, the property mortgaged was brought for auction. To ascertain the same, the matter was passed over.

15. Mr.G.Senthil Kumar, learned counsel for the bank while acknowledging the same, submitted that the property was sold for Rs.1,23,00,000/-. Though Rule 9(4) of the Security Interest (Enforcement) Rules, 2002, states that the balance amount of purchase price payable, shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the parties, making it obligatory on the parties to arrive at a consensus for extension of time at any cost not exceeding three months from the date of confirmation of the auction and in the instant case, the bank has not consented for further extension beyond 23.10.2017, now that the bank has sold the property once again for the very same value of Rs.1,23,00,000/- to another person, bank should not be permitted to enrich by forfeiting the amount from the writ petitioner and simultaneously appropriate the sale proceeds from the highest bidder in the auction sale notice dated 15.12.2017.

16. In such view of the matter, we are inclined to order refund. Accordingly, the writ petition is allowed. The first respondent, State Bank of India, Stressed Asset Management Branch, Coimbatore, is directed to refund a sum of Rs.30,75,000/-, within four weeks from the date of receipt of a copy of this order, failing which interest at the rate of 9% pa, is chargeable on the amount to be refunded, till repayment.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

The Authorised Officer
State Bank of India,
Stressed Asset Management Branch
No.1112, 1st Floor, Raja Plaza
Avinashi Road
Coimbatore - 641 037

+1cc to Mr.Peer Mohamed, Advocate SR.No.23482
+1cc to Mr.S.Sethuraman, Advocate SR.No.23481

W.P.No.4519 of 2018
and
W.M.P. No.5562 of 2018

AK(CO)
GN(13/04/2018)

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