

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2018

CORAM:

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

W.P.No.11134 of 2017
and WMP Nos.12068 of 2017 and 5165 of 2018

Shanmugavelu ... Petitioner
vs.

The Authorized Officer,
Central Bank of India,
Corporate Finance Branch,
Addison Buildings,
No.803, Anna Salai,
Chennai - 600 002. ... Respondent

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, calling for records relating to the respondents Letter CFB/CHEN/2016-17/919 dated 27.03.2017 and consequent letter CFB/CHEN/2017-18/18 dated 06.04.2017 and quash the same and consequently direct the respondent to receive the remaining bid amount of sum of Rs.9,20,25,000/- and issue the sale certificate in favour of the petitioner for the scheduled property to refund the sum of Rs.3,06,75,000/- with prevailing rate of interest to the petitioner.

For Petitioner : Mr.Sathish Parasan
for Mr.A. Swaminathan
For Respondent : Mr.M.Devaraj

ORDER

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

Order impugned dated 27.03.2017 is forfeiture of sum of Rs.3,06,75,000/-, being the Earnest Money Deposit, already paid by the auction purchaser, pursuant to the e-auction held on 07.12.2016. On 28.04.2014, this Court passed an interim order in WMP No.12068 of 2017. Bank has filed WMP No.5165 of 2018, to vacate the said interim order.

2. On this day, when the matter came up for further hearing, attention of this Court was invited to a decision of the Hon'ble Supreme Court dated 27.11.2017, in Civil Appeal No.19847 of 2017 (arising out of SLP(C) No.33514 of 2016) in the matter of Agarwal Tracom Pvt. Ltd. Vs. Punjab National Bank & Others, wherein under similar circumstances, dealing

with a case arising out of a challenge to the action of the Punjab National Bank, in forfeiting the appellant's deposit of money, under Rule 9(5) of the Security Interest (Enforcement) Rules, 2002, the Hon'ble Supreme Court while affirming the view of the High Court, at Paragraph No.34, held as follows:

"34. In the light of foregoing discussion, we are of the considered opinion that the Writ Court as also the Appellate Court were justified in dismissing the appellant's writ petition on the ground of availability of alternative statutory remedy of filing an application under Section 17(1) of SARFAESI Act, before the concerned Tribunal to challenge the action of the PNB in forfeiting the appellant's deposit under Rule 9(5). We find no ground to interfere with the impugned judgment of the High Court."

3. Though, order impugned has been challenged, by way of a writ petition, at the time when there was no decision of the Hon'ble Supreme Court, the decision in Agarwal Tracom's case, can be made applicable to the pending proceedings. Therefore, applying the decision of the Agarwal Tracom's case dated 27.11.2017, instant writ petition is dismissed, giving liberty to the petitioner, to challenge the letters of forfeiture in Letter CFB/CHEN/2016-17/919 dated 27.03.2017 and consequent letter CFB/CHEN/2017-18/18 dated 06.04.2017, before the competent forum under Section 17(1) of the SARFAESI Act, 2002, within a period of three weeks from the date of receipt of a copy of this order. No costs. Consequently, interim order granted in WMP No.12068 of 2017 is vacated and WMP No.5165 of 2018 is closed.

Sd/-

Deputy Registrar (CS)

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Sub Assistant Registrar

+ 1 cc to Mr. A. Swaminathan, Advocate Sr.28222
+ 1 cc to Mr. M. Devaraj, Advocate Sr.28002

W.P.No.11134 of 2017
and WMP Nos.12068 of 2017
and 5165 of 2018

(CS-DR)

EU (15/05/2018)

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