IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :11.06.2018
CORAM
THE HONOURABLE Mr.JUSTICE V.PARTHIBAN
W.P.No.31692 of 2017
and
W.M.P.No.34838 of 2017

1.M.V.Dillibabu

2.Mrs.Kavi Dillibabu ... Petitioners

Vs

The Chief Manager,
Punjab National Bank,
Branch: ARMB,
Chennai-600 014. ... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the first respondent to refund the amount of Rs.50,05,000/- (Rupees fifty lakhs and five thousand only) with interest at the rate of 18% per annum to the petitioners forthwith.

For Petitioners : Mr.R.Thiagarajan (SC) for
Mr.S.Giridharan

For Respondent : No appearance

O R D E R

Heard Mr.R.Thiagarajan, learned senior counsel for the petitioners.

2. The petitioners have approached this Court, seeking the following relief:-

> "To issue a Writ of Mandamus, directing the first respondent to refund the amount of Rs.50,05,000/- (Rupees fifty lakhs and five thousand only) with interest at the rate of 18% per annum to the petitioners forthwith."

3. The case of the petitioners is as follows:-
The petitioners have participated in E-auction sale notice issued under the provisions of SARFAESI Act on 13.02.2017 in regard to the property described in the notice. According to the auction notice, the property located in D.No.27, Church Road,

Mel Ayanambakkam, Ambattur Taluk, measuring 0.19 cents comprised in old S.No.438 and new S.No.438/1A with described boundaries was brought to auction sale. It appears that prior to the issuance of the E-auction, a demand notice was issued under Section 13(2) of the SARFAESI Act to the borrower on 30.05.2015. Since there was no response from the borrower, it appears that the respondent Bank took possession of the property on 11.12.2015. The respondent also informed the petitioners that there was no encumbrance in the property.

4. The auction was conducted on 17.03.2017 in pursuance of the notice dated 13.02.2017. The petitioners jointly participated in the auction sale and also deposited a sum of Rs.7,50,000/- through RTGS in favour of the respondent Bank, prior to the participation in the auction on 15.03.2017. After the bid was over, the petitioners were emerged as highest bidders having quoted Rs.75,05,000/- for the property which brought under auction.

5. In the said circumstances, the petitioners bid was accepted and immediately they have remitted a sum of Rs.18,77,000/- through RTGS on 17.03.2017 itself. Thereafter, subsequently, a sum of Rs.16,28,000/- and Rs.15,00,000/- was paid on 27.03.2017 and 03.04.2017 respectively and thus, the petitioners had totally paid a sum of Rs.50,05,000/- to the respondent Bank. In so far as the remaining balance to be remitted i.e., Rs. 25,00,000/- is concerned, the petitioners had applied for loan to the respondent Bank at Mugappair Branch, Chennai. The Branch Manager had agreed to sanction the loan and directed the petitioners to present market valuation report and also legal opinion. In order to get the valuation report, the petitioners appeared to have visited the auctioned property along with the approved valuer. But, they were surprised to find that the property could not be identified at all.

6. However, the respondent in the advertisement inviting tender has given incorrect boundaries in respect of the property in question, on a visit to the site, the properties could not be identified and in fact, the boundaries as mentioned in the notice was Government Poramboke land. The petitioners were also informed that there was no patta relating to the above property as claimed by the Bank. Only thereafter, they found that the notice dated 13.02.2017, inviting tender had falsely mentioned the description of the property. Without proper identification made by the Bank officials. According to the petitioners, they have been misled into participation in the E-auction and in investing huge amount towards the purchase of the property which had no valid description and boundaries.

7. In these circumstances, the petitioners have approached the respondent by their letter dated 19.09.2017, demanding re-

payment of Rs.50,05,000/- which was remitted in favour of the Bank by the petitioners, with interest as the E-auction conducted for the property without any identification of its boundaries was invalid. Since there was no response to the letter dated 19.09.2017, another letter was issued on 25.09.2017. In response to the letter, a reply was sent by the Bank on 25.10.2017, stating that the property remains intact in terms of the documents and it is a responsibility of the petitioners to demarcate the property and in case, the petitioner undertakes such exercise, the Bank will extend its cooperation. However, the stand of the respondent Bank in response to the petitioners' demand is not valid and acceptable for the following reasons.

8. The fact of the matter is that the respondent by their letter to Tahsildar dated 06.05.2017, has requested the Tahsildar, Maduravoyal Circle, Thiruvallur District, to help the Bank in finding exact location with boundaries and demarcation as they were unable to locate the property. This letter would show that the stand of the petitioners cannot be factually incorrect and the petitioners have been deceived in the bidding for the property, which cannot be located with proper boundaries. Therefore, the petitioners have approached this Court seeking a direction to the Bank to refund the amount paid by them, with interest.

9. The learned senior counsel for the petitioners would reiterate the averments contained in the affidavit filed in support of the writ petition. He would submit that admittedly from the records, the boundaries are not available for the subject property and in the absence of any clear demarcation, the Bank ought not to have mentioned in the auction notice about the possession taken by them. Such information which was mentioned in the E-auction notice was clearly incorrect and the same was intended to mislead the auction purchasers. In the instant case, in view of the incorrect information furnished in the auction notice, the petitioners have been misled into purchasing the property and the petitioner have also paid Rs.50,05,000/- for the auction purchase.

10. The learned senior counsel for the petitioners would draw the attention of this Court to a decision in the case of Sarala Bardia Vs. The Authorised Officer reported in 2017-2-Law Weekly 152. In the said decision, the learned Judge of this Court in similar circumstances, has directed the Bank to refund the sum deposited with interest. Therefore, the learned senior counsel would request this Court to direct the respondent Bank to return the money remitted by the petitioners with interest at the rate of 18% from the date it become payable till the date of realization.

11. Although notice has been served on the respondent and acknowledged, there was no representation on behalf of the respondent Bank in the present writ petition. Even on earlier occasion, when the matter was called, there was no representation on behalf of the respondent. Therefore, this Court heard the submissions made by the learned senior counsel for the petitioners and posted the matter for passing orders today. Even today, there was no representation for the respondent and the learned senior counsel appearing for the petitioners has made additional submissions.

12. This Court has considered the materials and pleadings placed on record. From the materials and pleadings, it emerges that the Bank has witting or unwittingly misled the petitioners into buying the subject property without identification of the property with clear boundaries. Infact, the letter written to the Tahsildar from the Bank after the auction on 06.05.2017, would clearly establish the fact that the Bank was unable to identify the property with clear boundaries and requested the Tahsildar to find the exact location of the property with boundaries and demarcation. When such is the position, this Court does not see how the Bank could have mentioned the property with boundaries in the auction notice and invited tenders from the purchasers. This fact clearly establishes that the Bank was careless and casual in dealing with public, particularly, in the matters where huge investments are involved. In the instant case, on believing the information furnished in the E-auction notice, the petitioners had invested Rs.50,05,000/- and such huge investment is now gone waste without any return to the investors.

13. Therefore, this Court is of the clear view that there is some force in the contention advanced by the learned senior counsel for the petitioners that having failed to reap the fruits of the investments by the purchasers and the careless and reckless conduct of the Bank in issuing E-auction notice without properly locating the property with clear boundaries, the petitioners are entitled to the interest as prayed for in the writ petition.

14. In the above circumstances, the petitioners have made out a clear case for grant of relief. Hence, there shall be a direction to the Bank to refund the amount remitted by the petitioner to the tune of Rs.50,05,000/- with interest at the rate of 18% from 16.05.2017 till the date of realization. The Bank is directed to refund the amount with interest within a period of two weeks from the date of receipt of the copy of the order.

15. With the above direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gsk

+1 cc to Mr.M.Muthappan advocate sr 36034

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