IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2018

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAISWAMY

W.P. No.12242 of 2018

M.Gangadaran .. Petitioner

Vs.

1.Punjab & Sind Bank,
International Bank Division,
Tiruppur - 641 604.

2.S.M.Jawahar Hussain .. Respondents

(R2 deleted vide order dated 10.08.2018, R4 amended vide order dated 17.05.2018 and deleted vide order dated 22.06.2018)

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus calling for the records of the 4th respondent relating to M.A.No.181 of 2017 dated 17.04.2018 (against Appeal No.6 of 2008 in R.P.No.26 of 2003 in T.A.No.212 of 2002 on the file of the Debts Recovery Tribunal, Coimbatore) and to the quash the same and direct the respondents 1 & 2 to receive the proportionate amount from the petitioner and release the property.

For Petitioner : Mr.A.Prabhakar Reddy
for M/s.APR Associates

For Respondents : Mr.D.Raja
for Mr.R.Selvakumar (R1)

R2 - Deleted vide order dated 10.08.2018

Mr.K.S.Duraipandian (R3)

R4 - Tribunal

O R D E R

(Order of the Court made by M.DURAISWAMY,J.)

The above Writ Petition has been filed by the petitioner to issue a Writ of certiorarified mandamus to call for the records of the 4th respondent relating to M.A.No.181 of 2017 dated 17.04.2018 preferred against Appeal No.6 of 2008 in R.P.No.26 of 2003 in T.A.No.212 of 2002 on the file of the Debts Recovery Tribunal, Coimbatore and to the quash the same and to direct the respondents 1 & 2 to receive the proportionate amount from the petitioner and release the property.

2.In this Writ Petition, the petitioner has challenged the auction conducted by the respondents 1 & 2.

3.Admittedly, the petitioner is a guarantor in respect of the loan availed by M/s.Neeru Apparels and Textiles. Since the principal debtors have defaulted in making payments to the Bank, the respondent - Bank filed recovery application before the Debts Recovery Tribunal - I, Chennai, which was subsequently transferred to the file of the Debts Recovery Tribunal - II, Chennai and thereafter, transferred to the file of Debts Recovery Tribunal, Coimbatore and re-numbered as T.A.No.212 of 2002. The claim of the Bank was decreed by the Debts Recovery Tribunal, Coimbatore on 23.01.2003. Subsequently, Recovery Certificate was issued, directing the sale of the properties mortgaged with the respondent - Bank. The petitioner remained exparte before the Debts Recovery Tribunal, Coimbatore and thereafter, he filed an application before the Debts Recovery Tribunal to set aside the exparte decree with a petition to condone the delay in filing the petition to set aside the exparte decree.

4.In the year 2006, the petitioner's properties were brought to sale, which was challenged by the petitioner by way of Writ Petition in W.P.No.46695 of 2006. This Court granted an order of interim stay on condition the petitioner depositing a sum of Rs.30 lakhs. Since the petitioner did not comply with the conditional order, the Writ Petition was dismissed. The Debts Recovery Tribunal, Coimbatore, by order dated 27.07.2007, dismissed the petition to set aside the exparte decree, which was also challenged before the Debt Recovery Appellate Tribunal, Chennai by the petitioner in M.A.No.127 of 2007. Subsequently, in the year 2007, the upset price for the properties was fixed at Rs.90 lakhs and the bid submitted by the 3rd respondent for Rs.91 lakhs was confirmed on 14.03.2007. In the year 2007, the Debt Recovery Appellate Tribunal also dismissed the appeal filed by the petitioner in M.A.No.127 of 2007, which was challenged before this Court in W.P.No.30431 of 2007, which was later dismissed as withdrawn with liberty to challenge the auction proceedings.

5.It is the case of the petitioner that the 2nd respondent had permitted the auction purchaser to pay the balance bid amount beyond the period of 15 days from the date of the auction and that the Sale Price of Rs.91 lakhs was very meagre as compared to the values of the secured assets.

6.So far as the valuation of the properties is concerned, the petitioner has not produced any valuation certificate to support his case. In the absence of any evidence produced before the Tribunal to establish that the value of the properties would be more than Rs.91 lakhs, the contention raised by the petitioner cannot be accepted. Inspite of the fact that the petitioner was served with a notice and knowledge about the proceedings pending before the Debts Recovery Tribunal and also that he had submitted a OTS proposal for a sum of Rs.50 lakhs in the year 2006 itself, after the filing of various Writ Petitions before this Court and applications before the Tribunal, the decree passed against the borrower and the petitioner has become final.

7.The learned counsel appearing for the petitioner, in support of his contentions, relied upon the following judgments:

(i)(2013) 9 Supreme Court Cases 460 [C.N.Paramasivam and another Vs. Sunrise Plaza through Partner and others] wherein the Apex Court held that the Rules under the Income Tax Act were applicable as far as possible and with the modification as if the said provisions and the Rules referred to the amount of debt due under the RDDB Act instead of the Income Tax Act.

(ii)(1955) 1 SCR 108 [Manilal Mohanlal Shah and others Vs. Sardar Sayed Ahmed Sayed Mahmad and another] wherein the Apex Court held that deposit of 25% of the purchase money immediately and the balance payment within 15 days of the sale are mandatory and upon non-compliance with these provisions, there is no sale at all.

(iii)(1996) 5 Supreme Court Cases 705 [Balram son of Bhasa Ram Vs. Ilam Singh and others] wherein also the Apex Court held that the duty to pay the full amount of purchase money within the prescribed period of 15 days from the date of sale of the property is cast on the purchaser by virtue of Rule 85 of Order 21 of the Code of Civil Procedure.

8.As per Section 29 of the Recovery of Debts and Bankruptcy Act, 1993, the provisions of the Second and Third Schedules to the Income Tax Act, 1961 and the Income Tax (Certificate Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of Income Tax Act. Therefore, the word "shall" used therein is directory and cannot be construed as mandatory, unless some prejudice is shown to have been caused to the petitioner. When the discretion is vested with the Recovery Officer to decide whether to forfeit the deposit or not or to grant some more time for paying the balance price, the granting of time to the 3rd respondent - auction purchaser to pay the balance Sale Price after a period of 15 days, cannot be held as incorrect.

9.In the case on hand, there was only one bidder, who submitted the bid in the year 2007. On the previous occasion, there was no bidders and therefore, the auction scheduled on the earlier occasion was postponed. Having suffered a decree before the Debts Recovery Tribunal, which has become final, the petitioner could have offered to pay the entire decree amount before the Tribunal and sought for setting aside the sale made in favour of the 3rd respondent as per the provisions of Order 21 Rule 89 of the Code of Civil Procedure. Instead the petitioner has filed the appeal before the Debts Recovery Tribunal raising the issue of irregularity in conducting the auction.

10.Since the respondent - Bank is dealing with public money, the loan availed by the borrower cannot be left un-recovered. The Tribunal has considered all the issues raised by the petitioner and has rightly rejected the case of the petitioner. We do not find any ground to interfere with the order passed by the Tribunal. The Writ Petition is devoid of merits and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

va

+1cc to Mr.R.Selvakumar, Advocate, S.R.No.66152
+1cc to Mr.K.S.Duraipandi, Advocate S.R.No.66755
+1cc to M/s.A.P.R. Associates SR. No.66256

W.P. No.12242 of 2018

RSK(CO)
rrs(15/10/2018)