

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/4/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.31903 of 2013

A.Azariah
Founder Trustee
M/s. Royal Educational Trust
No.16/177 Marappalam
Madukkarai
Coimbatore 641 105. ... Petitioner

Vs

1. The Authorised Officer
M/s. Corporation Bank
Velandipalayam Branch
Saibaba Colony
Coimbatore 641 105.
2. M/s. Matex Net Pvt Ltd
No.4, venkatasamy Road(East), R.S. Puram
Coimbatore - 641 002.
3. M/s. Royal Educational trust
No.16/177, Marappalam, Madukkarai
Coimbatore 641 105.
4. Mr.A.Jebasingh Prasad
5. A. Gunasingh
6. G. Flowrence Jasmine Bharathy ... Respondents.

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorarified mandamus to call for the records of the first respondent, pertaining to their impugned Notice No.OR/CBE/VLM/ADV/247/2013-14 of 30 days for sale of immovable secured assets under Rule 8 (5) of the Security Interest

4. A copy of the terms of sale is enclosed for your reference. Please note the tenders received will be opened by the undersigned at the place and time mentioned in the enclosed terms of sale."

2. Record of proceeding shows that on 25/11/2013, a Hon'ble Division Bench of this Court, passed the following order:-

"Petitioner's counsel has handed over a demand draft for a sum of Rs.10,00,000/- (Rupees Ten lakhs only) by way of demand draft, dated 7/10/2013 to Mr.Sethuraman, learned counsel appearing for the first respondent Bank. The first respondent bank is permitted to appropriate the said amount towards the loan amount of the petitioner.

2. The petitioner requests this Court to refer the matter to Permanent and Continuous Lok Adalat for settling the dispute. The petitioner also undertakes to settle the entire liability in a time frame and in the manner as may be fixed by the Lok Adalat. We accept the request made by the petitioner. Learned counsel appearing for the first respondent bank seeks time to get instruction in this aspect, but agree for referring the matter to Lok Adalat. In view of the above, this matter is referred to Permanent and Continuous Lok Adalat for consideration.

3. In the meanwhile, in view of the reference to Lok Adalat, the e-auction sale notice dated 23/1/2013 stands suspended on condition the petitioner deposits a further sum of Rs.50,000/- (Rupees Fifty thousand only) by way of RTGS to the first respondent bank on or before 26/11/2013 towards auction expenses, failing which this order shall stand automatically vacated."

3. On 30/1/2014, Lok Adalat of this Court has recorded as hereunder:-

"Writ petitioner and his counsel as well as counsel for the respondent present. It is represented by the learned counsel for the respondent that the respondent is not willing to settle the matter before Lok Adalat. Hence this case is referred back to Regular Court."

4. Today, Mr.Ramkumar, representing the learned counsel on

record, seeks time, to get instructions from his client for withdrawing the writ petition.

5. It is seen from the order made in W.P.No.25517 of 2013, dated 5/11/2013, earlier, Mr.A.Azariah, Founder Trustee of M/s. Royal Educational Trust, Coimbatore, has challenged the sale auction notice, dated 8/8/2013 fixing e-auction sale of the immovable property, morefully described in the schedule to the petition. Sale was fixed on 11/9/2013. Prayer in the writ petition was to quash the sale notice and consequently, to issue direction to the Authorised Officer, M/s. Corporation Bank, Velandipalayam Branch, Coimbatore to extend One Time Settlement proposal to the petitioner in accordance with Reserve Bank of India Guidelines, to enable the petitioner to discharge the liability.

6. While entertaining the writ petition, a Hon'ble Division Bench of this Court, vide order, dated 11/9/2013, granted interim stay, on condition that the petitioner deposits a sum of Rs.1.5 crores within a period of three weeks from the date of receipt of a copy of the said order. Writ petitioner therein had not complied with and filed M.P.No.2 of 2013, seeking modification of the order, dated 11/9/2013, for extension of time for making payment of Rs.1.50 crores. He has also sought for time to settle the entire amount.

7. Learned counsel for the respondent therein submitted that impugned auction sale notice did not take place and that the writ petition itself had become infructuous.

8. Having regard to the rival submissions at paragraph No.6, in W.P.No.25517 of 2013, dated 5/11/2013, a Hon'ble Division Bench of this Court ordered as hereunder:-

"6. Admittedly, the petitioner has not deposited any amount till date as per the conditional order dated 11/9/2013 and has today come forward with a demand draft for Rs.10 lakhs, which is a minuscule amount considering huge amount outstanding in a sum of Rs.5.50 crores, as stated by the learned counsel for the first respondent.

7. In such view of the matter, we find no bona fides in the plea of the petitioner for extension of time as prayed for in M.P.No.2 of 2013. Moreover, since the petitioner reneged on the payment as per the conditional order, the default clause in the order dated 11/9/2013 shall take effect forthwith. That apart, as stated by the learned counsel for the first respondent, e-auction

has not taken place in view of the interim order passed by this Court on 11/9/2013 and therefore, the relief sought for in the writ petition itself has become infructuous.

For the foregoing reasons, the writ petition is dismissed as infructuous. The bank is at liberty to proceed thereon immediately."

9. After the dismissal of the writ petition, another sale auction notice, dated 23/10/2013, has been issued. From the record of proceedings and material on record, it could be deduced that the writ petitioner has not complied with the conditional order, but whenever sale auction notice is issued, approached this Court, under Article 226 of the Constitution of India, though an alternate and efficacious remedy is available, in the statute.

10. A Hon'ble Division Bench of this Court had already expressed that the writ petitioner is not bona fide. Pursuant to the interim order passed by this Court in the instant writ petition, sale did not take place. Thus, the purpose of the petitioner is achieved, but conditional order not complied. Petitioner is not entitled to be heard further.

11. In view of the above, writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Authorised Officer
M/s. Corporation Bank
Velandipalayam Branch
Saibaba Colony, Coimbatore 641 105.

+1cc to Mr.S.SETHURAMAN, Advocate, S.R.No.29284

+1cc to Mr.VENKATESH MOHANRAJ, Advocate, S.R.No.29022

W.P.No.31903 of 2013

SSV(CO)

TR(18/05/2018)