IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP Nos.23441 & 23442 of 2016
WMP Nos.20122 & 20123 of 2016

WP No.23441 of 2016

S.Vasuki ... Petitioner

vs.

1. Deputy General Manager,
State Bank of India,
Stressed Assets Management Branch,
Red Cross Buildings, II Floor,
No.32, Montieth Road,
Egmore, Chennai - 600 008.

2.K.Krishnakumar

3. M/s.Rathna Stores (Firm),
Rep. by its Partner
Mr.Krishnakumar ... Respondents

Prayer in WP No.23441 of 2016: WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified Mandamus, calling for the records of the first respondent in issuance of the letter dated 15.03.2016 in Ref.No.SBI/SAMB/CLO-II/2015-16/2168 and quashing the same and thereby direct the first respondent to produce a No Objection / Clearance Certificate from the Income Tax Department in respect of the property at Door No.1, Lakshmi Street (previously known as Lakshmana Gramani Street), Purasawalkam, Chennai - 600 084 and receive the balance monies from the petitioner or in the alternative direct the first respondent to return the monies with interest and costs.

WP No.23442 of 2016

S.Siddartan ... Petitioner

vs.

1. Deputy General Manager,
State Bank of India,
Stressed Assets Management Branch,
Red Cross Buildings, II Floor,
No.32, Montieth Road,
Egmore, Chennai - 600 008.

2.P.S.Sivaperumal

3. M/s.Rathna Stores (Firm),
Rep. by its Partner
Mr.Krishnakumar ... Respondents

Prayer in WP No.23442 of 2018: WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified Mandamus, calling for the records of the first respondent in issuance of the letter dated 15.03.2016 in Ref.No.SBI/SAMB/CLO-II/2015-16/2169 and quashing the same and thereby direct the first respondent to produce a No Objection / Clearance Certificate from the Income Tax Department in respect of the property at Door No.10, Old No.9, Lakshmi Street (previously known as Lakshmana Gramani Street), Purasawalkam, Chennai - 600 084 and receive the balance monies from the petitioner or in the alternative direct the first respondent to return the monies with interest and cost.

For Petitioners in both WPs. : Ms.Tanya Kapoor for Mr.V.Anilkumar

For Respondents in both WPs. : Mr.P.Elaya Rajkumar (for R1) for M/s.Ramalingam Associates
Mr.P.R.Raman, Sr. Counsel(for R2&R3) for Mr.C.Seethapathy.

COMMON ORDER

(Order of the Court was made by SUBRAMONIUM PRASAD, J)

The petitioner in W.P.No.23441 of 2016, has challenged the letter of the Deputy General Manager, State Bank of India, Stressed Assets Management Branch, Chennai, first respondent herein, dated 15.03.2016, made in Ref.No.SBI/SAMB/CLO-II/2015-16/2168 and consequently, sought for a direction to the first respondent to produce a No Objection / Clearance Certificate from the Income Tax Department in respect of the property at Door No.1, Lakshmi Street (previously known as Lakshmana Gramani Street), Purasawalkam, Chennai - 600 084 and receive the balance monies from the petitioner or in the alternative direct the first respondent to return the monies with interest and cost.

2. In W.P.No.23442 of 2016, the petitioner has challenged the letter of the Deputy General Manager, State Bank of India, Stressed Assets Management Branch, Chennai, first respondent herein, dated 15.03.2016 in Ref.No.SBI/SAMB/CLO-II/2015-16/2169 and consequently, sought for a direction to the first respondent to produce a No Objection / Clearance Certificate from the Income Tax Department in respect of the property at Door No.10, Old No.9, Lakshmi Street (previously known as Lakshmana Gramani Street), Purasawalkam, Chennai - 600 084 and receive the balance monies from the petitioner or in the alternative direct the first respondent to return the monies with interest and cost.

3. The Deputy General Manager, State Bank of India, Stressed Assets Management Branch, Chennai, first respondent herein, has passed an order of attachment for sale of properties described below, for nonpayment of loan by the 3rd respondent Firm, which had borrowed money from the first respondent.

Item No.1 (Belonging to Shri S.Krishnakumar)

All that piece and parcel of vacant land bearing Old No.58, then Nos.74 & 75, Present Door Nos.177 & 179, Purasawalkam High Road, Chennai - 600 007, R.S.No.121/1 of Block No.5, Purasawalkam Division, Purasawalkam - Perambur Taluk, of an extent of 3 Grounds 231 Sq.ft or thereabouts and the bounded on the:-

North by : Purasawalkam High Road (Block No.9);
South by : Property of Saraswathi Ammal (RS No.121/2);
East by : Property bearing Door No.73
(RS Nos.122/2, 123 and 124)
West by : Lakshmana Gramani Street (RS Nos.120) and situated within the Registration District of Chennai North and Sub District of Purasawalkam.
(Covered under the Document No.3534 of 2004)

Item No.2 (Belonging to Shri S.Krishnakumar)

All that piece and parcel of vacant land comprised in R.S.No.121, Present R.S.No.121/2 of Block NO.5, Purasawalkam Division, Prusawalkam, Perambur Taluk, bearing Door No.1, Lakshmi Street (Previously Lakshmana Gramani Street), Purasawalkam, Chennai - 600 084, measuring 1 Ground 1890 sq.ft. (4386 sq.ft as per patta) or thereabouts bounded on the

North by : Property of the Purchaser (R.S.No.121/1)
South by : Door Nos.2 and 3, Lakshmi Street
(R.S.No.127/1) and 127/2)
East by : Door Nos.10 and 11, Abirami Street
(R.S.Nos.124 and 125/2)
West by : Lakshmi Street (R.S.No.120)
and situated within the Registration District of

Chennai Central and Sub District of Purasawalkam. (Covered under the Document NO.4219 of 2006)

Item No.3 (Belonging to Shri P.S.Sivaperumal)

All that piece and parcel of land and building bearing Door No.10, Old NO.9, Lakshmana Gramani Street on the Eastern Side, Door Nos.76 & 77, Old Nos.59/1 and 59/2, Purasawalkam High Road on the Northern Side, Purasawalkam, Chennai - 600 084, bearing O.S.No.135, Re-Survey No.119 of Block No.5, Purasawalkam Division, Purasawalkam - Perambur Taluk, of an extent of One Ground and 1280 sq.ft or thereabouts and bounded on the

North by : Purasawalkam High Road, Block No.9;
South by : Jayarama Chettiar's House, R.S.No.117/2;
East by : Lakshmana Gramani Street, R.S.No.120;
West by : Millers Road, Block No.50
and measuring,
East to West : on the North : 78 feet;
East to West : on the South : 80 feet;
North to South : on the East : 47 feet;
North to South : on the West : 46 feet;
and situated within the Registration District of Chennai North and Sub District of Purasawalkam. (Covered under Document No.2605/2003)

4. Properties, under mortgage, have been brought to sale and sale notice, dated 13.01.2016 contained the following stipulations.

"9. The Earnest Money Deposit (EMD) of the successful bidder shall be retained towards part sale consideration and the EMD of unsuccessful bidders shall be refunded. The Earnest Money deposit shall not bear any interest. The successful bidder shall have to deposit 25% of the sale price, immediately on acceptance of bid price by the Authorised Officer and the balance of the sale price on or before 15th of sale or within such extended period as agreed upon in writing and solely at the discretion of the Authorised Officer. Default in deposit of amount by the successful bidder would entail forfeiture of the whole money, already deposited and property shall be put to re-auction and the defaulting bidder shall have no claim / right in respect of property / amount.

14. Our Bank has First Priority Charge over the properties brought for e-auction sale. Hence, Income Tax Attachment for Rs.10,42,45,095/- as per its letter No.T.R.No.966/2015-16 dated 20th Nov' 15, on the properties brought for sale rank subservient to our Bank's charge. The purchaser of the properties will not be liable for the above income take dues of

M/s.Rathna Stores (Firm) and the purchaser's interest and title over the property will not be affected by the above attachment by I.T.Dept."

5. The petitioners herein participated in the auction and were the highest bidders. As stipulated in the sale notice, they deposited a sum of Rs.2,17,25,000/- and Rs.2,16,25,000/- respectively, for the two properties, as the earnest money. For repayment of the balance 75%, the petitioners have approached South Indian Bank, Kellys, Chennai, for obtaining loan. The South Indian Bank, Kellys, Chennai, by its letter dated 08.03.2016, gave a certificate to the petitioners, which reads as under

WP No.23441 of 2016

TO WHOMSOEVER THIS MAY CONCERN

This is to inform you that Mrs.S.Vasuki, No.10, Lakshmi Street, Purasawalkam, Chennai - 600 007, who is the successful bidder in the e-auction sale of vacant land comprised in R.S.No.121, present R.S.No.121/2 of Block 5, Purusawalkam Division, Purusawalkam Division, Purusawalkam, Perambur Taluk, bearing Door No.1, Lakshmi Street (previously Laksmana Gramani Street) Purusawalkam, Chennai -900 084, measuring 1 ground 1890 sq.ft. (4386 sq.ft., as per patta) or thereabouts has applied for a purchase loan from us and the same is at process at our end. The loan will be released only on the lifting of the IT attachment reflected in the EC of the said property.

WP No.23442 of 2016

TO WHOMSOEVER THIS MAY CONCERN

This is to inform you that Mr.S.Sidharthan, No.10, Lakshmi Street, Purasawalkam, Chennai - 600 007, who is the successful bidder in the e-auction sale of land and building bearing Door No.10, Old No.9, Lakshmana Gramani Street on the eastern side, Door Nos.76 & 77, Old Nos.59/1 and 59/2, Purusawalkam High Road on the Northern Side, Purusawalkam, Chennai - 600 084, bearing O.S.No.135, Re-survey No.119 of Block 5, Purusawakkam Division, Purusuwakkam-Perambur taluk of an extent of One Ground and 1280 sq.ft. or thereabouts has applied for a purchase loan from us and the same is at process at our end. The loan will be released only on the lifting of the IT attachment reflected in the EC of the said property.

6. In view of the said certificates the petitioners approached the Deputy General Manager, State Bank of India, Stressed Assets Management Branch, Chennai, first respondent herein, for No Objection / Clearance Certificates, for lifting of the Income Tax attachment mentioned in the encumbrance

certificate. The 1st respondent by its letter dated 15.03.2016, directed the petitioners to pay the balance 75% of the sale price. The bank had further stated that upon receipt of remaining 75% of the sale price, necessary arrangements would be made for lifting the income tax attachment. Letter dated 15.03.2016 reads as hereunder.

"SBI/SAMB/CLO-II/2015-16/2168 Date: 15-Mar-16

Dear Sir,

Stressed Assets Management
M/s. Rathna Stores (Firm)
Sale of properties under SARFAESI Act,
E-auction held on 22nd Feb '16
Forfeiture of deposit made - Intimation.

With reference to your letters dated 5th Mar '16 and 10th Mar '16, we invite you attention to the captioned e-auction sale notice wherein it has been stated clearly that:

- the successful bidder had to deposit 25% of the sale price immediately on acceptance of the bid price and the balance 75 of sale price has to be paid by the successful bidder on or before the 15th day of confirmation of sale failing which would entail forfeiture of the whole money already deposited, the properties shall be put to re-auction and the defaulting bidder shall have no claim / right in respect of the property / amount.
- Our Bank has First Priority Charge over the properties brought for e-auction sale on 22nd Feb '16. Hence, the Income Tax attachment for Rs.10.42 Cr. as on the properties brought for sale ranks subservient to our Bank's charge. it is also clearly specified that the purchasers of the properties in the said auction will not be liable for the above noted Income Tax dues of M/s.Rathna Stores (Firm) and the auction purchasers' interests and title over the properties will not be affected by the abovesaid attachment by the Income Tax Dept.

Incidentally, we invite your attention to your letter dated 5th Mar '16, wherein you have undertaken to indemnify the Bank to the extent of loss, if any, arising out of delay on your part in making payment besides assuming full responsibility for such delay.

As for the Income Tax Attachment is concerned, upon receipt of remaining 75% of the sale price from you, necessary arrangements would be made for lifting the Income Tax attachment referred to above. In this regard, we have had discussion with the officials of

Income Tax Department.
In the above backdrop, we reiterate that you should arrange to deposit the balance 75% of the sale consideration immediately failing which the amount deposited by you would be forfeited without any notice.
Yours faithfully,
Sd/-
For Deputy General Manager"

7. On the failure of the petitioners to deposit the balance 75% of the sale price, the State Bank of India, has forfeited 25% earnest money, deposited by the petitioners. In the meantime, the 3rd respondent - M/s.Rathna Stores (Firm), has approached the Debts Recovery Tribunal. In the Debts Recovery Tribunal, the 3rd respondent - M/s.Rathna Stores (Firm), paid the balance amount, which according to the Bank, was due and according to M/s.Rathna Stores, the 3rd respondent herein, the loan amount now stands discharged.

8. It is contended by the learned counsel for the petitioners that 1st respondent ought not to have forfeited 25% of the earnest money, because the 1st respondent bank, has failed to lift the Income tax attachment, as promised by them, in order to obtain loan for the payment of the balance 75% of the sale price. This contention cannot be accepted, for the following reasons.

9. A perusal of the sale notice and the letter dated 15.03.2016, extracted supra, do not reflect any such promise that has been made on behalf of the State Bank of India, rather, the sale notice, states that the bank has First Priority Charge over the properties brought for e-auction sale and the Income Tax attachment for Rs.10.42 Cr. as on the properties brought for sale, ranks subservient to the Bank's charge.

10. Knowing fully well of the income tax attachment, petitioners have participated in the auction and purchased the properties. Sale notice also categorically states that if there is a failure on the part of the auction purchaser in depositing the balance 75% of the sale price, the earnest money deposit of 25%, would stand forfeited.

11. Further, Rules 9(3), (4) & (5) of the Security Interest Enforcement Rules, 2002, reads thus.

(3) On every sale of immovable property, the purchaser shall immediately pay a deposit of twenty-five per cent of the amount of the sale price, to the authorised officer conducting the sale and in default of such deposit, the property shall forthwith be sold

again.

(4) 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.

(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may be subsequently sold.

12. A perusal of Rule 9(5) of the abovesaid Rules would show that the failure of the payment of the balance amount of sale price, entails forfeiture of the earnest money deposit. Therefore, the contention of the petitioners that the Earnest Money Deposit of 25% ought not to have been forfeited, cannot be accepted.

13. The second contention of the petitioners that the bank should not have adjusted the 25% amount paid by the petitioners towards the debt due from 3rd respondent firm, is not relevant for the present case. What happened between the State Bank of India and the respondents 2 and 3, is not the subject matter of the writ petitions, which is for a direction to the 1st respondent to produce a No objection / clearance certificate from the Income Tax Department in respect of the properties or in the alternative for refund of the 25% of the earnest money, which had been deposited by the petitioners pursuant to the auction conducted, as per the terms and conditions stipulated in the sale notice. Writ petitions are devoid of merits and hence dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petitions are dismissed.

Sd/-
Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

skm/ars
+4cc to Mr.Ramalingam, Advocate SR.No.55191 and 55192

+2cc to Mr.V. Anil Kumar, Advocate SR.No.54916, 54917

WP Nos.23441 & 23442 of 2016
and
WMP Nos.20122 & 20123 of 2016

GMY(10/09/2018)