IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3/8/2018

C O R A M

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

W.P.No.18264 of 2018

1. V.Bhaskar

2. Hemasree ... Petitioners

Vs

1. The Authorised Officer
IDBI Bank Limited
Opp to St.Joseph's School
Trichy Road
Coimbatore 641 018.

2. The Authorised Officer
IDBI Bank Limited
Dr.Balasundaram Road
Off: Avinashi Road
ATT Colony
Coimbatore 641 018.

3. Harishankar. ... Respondents

(R.3 suo motu impleaded)
by order dated 23/07/2018

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing the respondent Bank to consider the petitioner's letter, dated 25/4/2018 for sale of the property situated at No.244/2B, Flat No.207, Block No.D, second floor, Marigold Apartment, Raheja Enclave, Race Course, Coimbatore to the prospective purchaser for a sum of Rs.1 crore 11 lakhs and deposit the sale proceeds directly in the Bank.

For Petitioners ... Mr.G.Thyagarajan

For Respondents ... Mr.K.Balamurali
for M/s. Shivakumar & Suresh
for R.R.1 and 2.

Mr.K.N.Nataraj
for R.3.

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O R D E R

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

On 16th July, 2018, we passed the following order.

"Material on record discloses that earlier, when the tenant filed W.P.No.1032 of 2018, for a mandamus, directing the respondent/IDBI Bank Ltd., to pay the security/caution deposit paid by Saraswathi/petitioner therein, for a sum of Rs.10,50,000/-, as the petitioner is willing to vacate the tenancy premises, situated at No.244/2B, Flat No.207, Block No.D, 2nd Floor, Marigold Apartment, Raheja Enclave, Race Course, Coimbatore 641 018, learned counsel for the respondents 2 and 3 submitted that they would require three months time to pay the loan amount to the Bank. Learned counsel further submitted that the respondents 2 and 3 have no objection to sell the property directly, but the upset price be fixed not less than Rs.1.25 crores. Bank counsel did not agree for the above said submission.

2. Placing on record the above and taking note of the decision of the Hon'ble Supreme Court, vide, order, dated 5/3/2018, this Court dismissed as follows:-

"As there is no constitutional/statutory right, to be enforced by the petitioner/tenant against bank, writ petition is misconceived and the same is dismissed."

3. Though the borrowers/guarantors submitted that the entire loan amount would be discharged within three months time, the same has not been done.

4. After the disposal of the writ petition, e-auction sale notice, dated 27/3/2018, has been issued by IDBI Bank, for an outstanding amount of Rs.2,77,42,251.50, along with further interest and other expenses/costs thereon, with effect from 1st November 2017. E-auction has been fixed, on 17/4/2018. Reserve price has been fixed at Rs.111 lakhs.

5. Pursuant to the E-auction sale notice, dated 27/3/2018, one Mr.N.Harisankar, has sent a representation, dated 25/4/2018, to the Authorised Officer, IDBI Bank Ltd., Coimbatore, stating that he had arranged for a third party purchaser, to purchase the house property for Rs.111 lakhs and willing to deposit Rs.10,50,000/- towards Earnest Money Deposit. According to him, balance amount of Rs.15.50 lakhs would be deposited within

thirty days, from the date of taking possession from the tenant. For the sake of convenience, letter, dated 25/4/2018, is reproduced hereunder:-

> "I am N. Harisankar, aged about 43 years, S/o. V.Natarajan (late), Hindu Religion, presently residing in the above address and I am submitting my offer directly for the second time with you on the captioned subject.
>
> As M.Hemasree is my family friend and she is known to me very much and her husband Mr.V.Bhaskar is medically sick and very much unstable due to cardiac arrest, I am helping her by buying her house property for Rs.111.00 lacs, although the flat is not worth for the price in the present market conditions, as there is no car parking facility for this flat and the flat is over 12 years old.
>
> I know Smt.Saraswathy the tenant is living there since 2010, therefore, I am willing to buy the property un-encumbered only. Hence it will be easy for the Bank to vacate her by releasing her security deposit of Rs.10,50,000/- by way of two demand drafts (one for Rs.9 lakhs and another for Rs.1.5 lacs. I am also ready to deposit a demand draft for Rs.5.00 lacs in the name of the IDBI Bank Ltd.
>
> I request the Bank to release Rs.9.00 lacs demand draft to that lady after taking an under taking to vacate the house in 30 days and also request the Bank to release the second DD of Rs.1.5 lacs to her upon collecting the house key from her.
>
> Once the Bank is intimating me the possession of the property, in about 30 days of time, I will deposit with the Bank the rest amount due after deducting Rs.15.50 lacs.
>
> I also request the Bank to issue an NOC in the Sub-Registrar's name of the concerned jursidciton, such that I can get the property sold and registered in my name from the property owners.

Once I get the reply from your side, I will send the demand drafts to you, such that the Bank can get the tenant vacated and can collect the key of the flat from the tenant and I request the Bank to inform me immediately to enable me to make the balance payment ready, since I have to arrange source for the funds.

I generally will never buy flat as it does not get any appreciation in value, at the same time, I will not participate in the auction to buy any property with any type of encumbrance/curse.

Whereas, I am entering into this, against my principle because of the lady M.Hemasree as her father Shri.K.Mani (late) did may favours to my family when they were doing well.

Any communication in this regard may be sent to me by the IDBI Bank/from your desk at the earliest to me to proceed further quickly."

6. Similar letters have been sent by the borrower/guarantor, on 25/4/2018 and 26/5/2018, which reads thus:-

"Now again we have received your E-Auction notice for Rs.111.00 lacs referred above, and after seriously observing the same, we are issuing this communication to you objecting the following:-

1. In your E-auction notice you have mentioned the "The Bank has filed an application with District Magistrate, Coimbatore, for supporting peaceful possession and disposal of the property." Here you have suppressed the true outcome of your application and misguided the public at large. Therefore, it is impugned E-Auction notice.

2. In that E-Auction notice you have wantonly suppressed the facts and particularly about the one detailed in the point No.1 and published the E-Auction notice in the daily "Indian Express" and in the daily "Thinamani".

3. You have also mentioned that you did not know any other encumbrances on the property, where you have appeared in the civil appeal filed by the law full tenant, through your Advocate while the said Appeal is under subjudice in the Court.

4. You have wantonly omitted to mention in the description of the property that there is "NO CAR PARKING" available to this FLAT and the age of the FLAT.

5. When the SARFAESI Act 2002 provides private treaty also and when we fetched the buyers for various time since the year 2013, one of them is the prospective buyer offering Rs.110.00 lacs well before 22/8/2017, you have returned the offer to the buyer with a letter and his payment, whereas you have set the upset price for Rs.111.00 lacs, to avoid my prospective buyer's offer by fixing the upset price as Rs.111.00 lacs, for the alleged property and the auction is said to be conducted by 18/12/2017 and the sale proceeds will be covered by the end of 31/1/2018 only. Therefore, lapsing 5 months for the realisation of funds through the alleged property, is not surfacing any meaningful realisation of money from the asset and it is surfacing only either your syndication motive or ulterior motive or to establish the high handed power of your Bank/Team in order to satisfy your ego or in order to cover your earlier actions/inactions/non accountable issues that all you have committed to us since 2013, when leads us on the street, with the loss of Rs.99.00 lacs, for which we have already taken actio in the appropriate forums of law (i.e., after 6 months you are trying to gain Rs.1.00 lacs more is a clear audacity or recklessness or ulterior motive, which exhibits that you have plot a bidder to your suits and gains and hence you have

fixed a marginal increase of one lakh only, just to make my prospective purchaser and not take further interest. Despite we have annexed the buyer's Adhar Card, PAN Card, Ration Card, IT Returns to prove their capability etc., along with the advance payment of sizable amount, your returning their offer by post to them clearly establishes your ulterior motive only).

6. So you have wantonly delayed over a year period which is not gaining anything to us or to the Bank, but for whose gain the upset price is fixed with a marginal increase of Rs.1.00 lac may be to suit to your prefixed buyer with a marginal offer of Rs.1.00 lac more, obviously surfaces the ulterior motive of you.

7. You have also suppressed the receipt of Rs.25.00 lacs from us through the sale proceeds of our vadavalli site and therefore, your claim is absolutely wrong and not correct. Further it is pertinent to note here that the land was also sold by us by getting high court order, but we sold it for Rs.25.00 lacs with a difference of Rs.8.00 lacs high from the Bank's price fixation of Rs.17.00 lacs for the property. There too we proved that the price realisation for our property is more and the Bank is trying to devalue the property to auction for the reason best known to them. Here you have not gone for physical possession of the property as it was a vacant land, (DTP Approved site admeasuring 5.5 cent).

8. Again as per the direction of the Hon'ble High Court, I have again fetched you the buyer and he has also along with me handing over the offer letter, dated 25/4/2018 for Rs.111.00 lacs.

9. I am not being informed about the outcome of the e-auction conducted for the fourth time on 17/4/2018 despite my several

requests.

10. You have not replied to my effort of soliciting the buyer, where as you have returned the offer letter and the payment directly to the buyer.

I wish to reinstate that the housing loan was availed by me from REPCO bank only for Rs.83 lakhs and since the purchase of the house (flat), it is rented to this lady S.Saraswathy. It is IDBI only chased my husband for coming to your Bank as our housing loan is of high value. Then your DGM in order to make us come your Bank he made so many promises and sanctions, but nothing is fully released including the housing loan take over + Improvement amounting to Rs.100.00 lacs, and the sanctioning is for Rs.100.00 lacs, but released was only the taken over amount of Rs.86.00 lacs, for which we were forced to pay pre-closing penalty of Rs.6.00 lacs to REPCO Bank.

My husband V.Bhaskar is pushed down to bedridden condition surviving with 4 heart attack and two brain stroke because of your Bank/Teams' unusual tortures given to him by various measures, and is being made to be medically sick and disable.

Therefore, unless we sell the house for Rs.111.00 lacs the payment of Smt.S.Saraswamy Rs.10.50 lacs cannot be made by us.

However I am going to meet the higher ups in CVO and meet the Chief Vigilance Commissioner, and will submit all the documentary evidence that we have in hand to establish the abuse of powers, false promises, wrong sanctioning of loan to M/s. Vetri International, Tirupur for Rs.400 lacs + and since my husband stopped the sanctioning of Rs.800 lacs from J & K Bank, as the DGM/your Bank had hidden the various facts of that M/s. Vetri International, Tiruppur - loan account and other materialistic information which are highly detrimental to your IDBI Bank itself.

Today's status of us is a GIFT given to us by the IDBI Bank, because my husband did not cooperate for the wrong doings of the SME team prevailed those days.

Kindly initiate to act upon the buyer's offer letter that I have fetched for Rs.111.00 lacs to buy my house property, whereas you have filed physical possession at Collector Office, without minding the prospective buyer's offer letter.

Kindly acknowledge the receipt of this letter and render justice to us and to the Bank as well."

7. Contending inter alia that the petitioners letter, dated 25/4/2018, is yet to be answered, instant writ petition is filed for a mandamus, directing the respondent Bank, to consider the petitioners letter, for sale of the property, situated at No.244/2B, Flat No.207, Block No.3, Second Floor, Marigold Apartment, Raheja Enclave, Race Course, Coimbatore, to the prospective purchaser, for a sum of Rs.1 crore 11 lakhs and to deposit the sale proceeds directly in the Bank.

8. Mr.G.Thyagarajan, learned counsel for the petitioners further submitted that there were no bidders on 17/4/2018. Proposed purchaser is willing to pay the entire amount of Rs.1.10 crores being the upset price or little more than the upset price, as per the sale notice dated 27/3/2018, within twenty days from today. Learned counsel for the petitioners further submitted that accordingly, an affidavit will be filed by 23/7/2018. Payment will be made as assured.

9. At this juncture, we wish to record that mandamus prayed for cannot be granted, after considering a catena of decisions, on the legal right of a person, to seek for writ of mandamus, a Hon'ble Division Bench of this Court in Tamilnadu Industrial Investment Corporation Vs. Millenium Business Solutions Private Limited, reported in 2004 (5) CTC 689, at Paragraph Nos.7,8,16 and 18, held as follows:

"7.In our considered opinion it is not proper for the Court to interfere in such matters relating to recovery of loans. Such matters are contractual in nature and writ jurisdiction is not the proper remedy for this. A writ lies when there is an error of law apparent on the face of the record, or there is violation of law. No writ lies merely for directing one time settlement or for directing re-scheduling of the loan or for fixing instalments in connection with the loan. It is only the bank or the financial institution which granted the loan which can re-schedule it or fix one time settlement or grant instalments. The Court has no right under Article 226 of the Constitution to direct grant of one time settlement or for re-scheduling of the loan, or to fix instalments.

8. No doubt Article 226 on its plain language states that a writ can be used by the High Court for enforcing a fundamental right or for 'any other purpose'. However, by judician interpretation the words 'any other purpose' have been interpreted to mean the enforcement of any legal right or performance of any legal duty, vide Calcutta Gas Co. v. State of West Bengal, AIR 1963 SC 1044. In the present case, the writ petitioner has really prayed for a Mandamus to the Corporation to grant it a one time settlement, but no violation of any law has been pointed out. In our opinion, no such mandamus can be issued in this case, and hence the writ petition should not have been entertained. A mandamus is issued only when the petitioner can show that he has a legal right to the performance of a public duty by the party against whom the mandamus is sought.

16. A loan is granted in terms of the contract, and grant of one time settlement or re-scheduling of the loan amount is really a modification of the contract, which can only be done by mutual consent of the parties, vide

Section 62 of the Contract Act, 1872. The Court cannot alter the terms of the contract.

18. Before parting with the case we would like to mention that recovery of tens of thousands of crore rupees of loans of banks and financial institutions has been held up by Court orders under Article 226 proceedings which were really unwarranted. However, much sympathy a Court may have for a party, a writ Court must exercise its jurisdiction on well settled principles, and not a mere sympathy or compassion. No doubt, there be hardship to a party, but unless violation of law is shown the Court cannot interfere. Holding up recoveries of loans by unwarranted Court orders is causing incalculable harm to our economy, since unless the loan is recovered a fresh loan cannot be granted to needy persons. The Courts must keep these considerations in mind."

10. A Hon'ble Division Bench of this Court, in M/s.Digivision Electronics Ltd., Registered Office at No.A5 & 6, Industrial Estate, Guindy, Chennai - 32 Vs. Indian Bank, rep. by its Deputy General Manager, Head Office, 31, Rajaji Salai, Chennai-1 and another, reported in 2005 (3) LW 269, at paragraph Nos.42 and 46, held as follows:

"42. Some of the learned counsel submitted that the Court should direct one time settlement or fixing of installment or rescheduling the loan. In Tamilnadu Industrial Investment Corporation Vs. Millenium Business Solutions Private Limited, 2004 (5) CTC 689, it has been held that this Court cannot pass any such order in writ jurisdiction, since directing one time settlement or granting installments is really re-scheduling the loan, which can only be done by the bank or financial institution which granted the loan. This Court under Article 226 of the Constitution cannot reschedule a loan. A writ is issued when there is violation of law or error of law apparent on the face of the record, and not for rescheduling loans. The Court must exercise restraint in such matters, and not depart from well settled legal principles".

"46. Writ is a discretionary remedy, and hence this Court under Article 226 is not bound to interfere even if there is a technical violation of law, vide R.Nanjappan Vs. The District Collector, Coimbatore, 2005 WLR 47, Chandra Singh Vs. State of Rajasthan, JT 2003 (6) SC 20. The Managing Director, Tamil Nadu State Transport Corporation (Madurai Division-IV) Ltd., Dindigul Vs. P.Ellappan, 2005 (1) MLJ 639, Ramniklal N.Bhutta and Another Vs. State of Maharashtra, 1997 (1) SCC 134, etc."

11. Sale notice, dated 27/3/2018, fixing the upset price, has lapsed. A sum of Rs.2,77,42,251.50 is due and payable as on 27/3/2018. Though it is for the Bank to issue a fresh sale notice, fixing the upset price which may even be lesser than what was already fixed, having regard to the proposal of the borrower, in bringing a third party to purchase the property, with a margin above the upset price, vis-a-vis, the interests of the Bank in realising public money, we direct the learned counsel for the petitioners to serve the entire case papers on Mr.K.Balamurali, who had appeared for IDBI Bank Limited, in W.P.No.1032 of 2018.

12. Though the petitioners have stated that they had arranged for a purchaser, there are no documents in the typed set of papers supporting the averments.

13. We permit the learned counsel for the petitioners to cause notice to the Authorised Officer, IDBI Bank Ltd., Opp. To St. John's School, Trichy Road, Coimbatore, on 23/7/2018. If affidavit as directed is not filed and service not completed, writ petition would be disposed of on merits. Learned counsel for the petitioners shall communicate the orders of this Court to IDBI Bank Ltd.

14. Affidavit of the proposed purchaser duly signed before a notary public shall also be filed before this Court.

15. Post on 23/7/2018.

2. Subsequently, when the matter came up on 23/7/2018, we further ordered, as hereunder:-

> "On 16.07.2018 when the instant writ petition, came up for hearing Mr.G.Thyagarajan, learned counsel for the petitioners/borrower submitted that a third party is willing to purchase the scheduled property mentioned in the e-auction sale notice dated 27.03.2018, for Rs.1.10 Crores or little more than the upset price fixed. He also produced two demand drafts for Rs.14 Lakhs, being the EMD fixed in the said auction notice. Amount due in the said auction notice dated 27.03.2018 is Rs.2,77,42,251.50p. We directed the petitioner to file an affidavit by the prospective purchaser.
>
> 2. On this day, when the matter came up for further hearing, Mr.N.Harishankar, prospective purchaser, has filed and affidavit dated 20.07.2018, stating that he would deposit a sum of Rs.1.11 Crores, with the bank, which includes Rs.10.50 Lakhs to be paid by the borrower to the tenant in occupation, since 2010. Prospective purchaser has further stated that he is ready and willing to deposit the abovesaid sum, as per his offer letter dated 25.04.2018 on 20.08.2018.
>
> 3. Debt outstanding as per the sale notice dated 27.03.2018 is Rs.2,77,42,251.50p. Prospective purchaser has come forward to purchase the secured asset / auctioned property mentioned in the sale notice dated 27.03.2018 for Rs.1.11 Crores or little more than the upset price.
>
> 4. As the petitioners have projected the case of the prospective purchaser, Mr.N.Harishankar and also filed his affidavit dated 20.07.2018, for effective adjudication of the lis, this Court is of the view that Mr.N.Harishankar, is a necessary and proper party. Hence, in exercise of powers under Article 226 of the Constitution of India, this Court suo motu impleads Mr.Harishankar, prospective purchaser, as 3rd respondent. Petitioners are permitted

to serve the entire cause papers on Mr.N. Harishankar.

5. Considering the outstanding amount, we cannot direct the bank to accept the purchaser's offer as full satisfaction for discharge of the entire loan amount. It is for the bank to respond. Mere filing of an affidavit would not satisfy the bonafides of the proposed purchaser.

6. Considering the fact that the loan has been availed on 23.02.2010, lapse of eight eight years in realising the balance, filing of writ petitions by the tenant and borrowers in W.P.Nos.1032 of 2018 and 22846 of 2017, respectively, and the orders passed thereon dated 05.03.2018 and 04.10.2017, respectively, this Court is of the view that to show the bonafides of the prospective purchaser, he must pay the entire amount of Rs.1.11 Crores in two equated instalments. Prospective purchaser has filed affidavit dated 20.07.2018, that he will make the payment by 20.08.2018. Proposed purchaser/3rd respondent is directed to pay Rs.48.50 Lakhs, as the first instalment on or before 07.08.2018 and further sum of Rs.48.50 Lakhs, as the second instalment on or before 20.08.2018. Proposed purchaser/3rd respondent is further directed to file an affidavit that if payment of 1st instalment is not made within the stipulated time, sum of Rs.14 lakhs deposited with the bank, would stand forfeited automatically without further reference to the orders of this Court.

7. To show the bonafides, the proposed purchaser is directed to produce Demand Draft for Rs.14 Lakhs, drawn in favour of the bank, by 25.07.2018.

8. Post on 26.07.2018."

3. Today, Mr.K.N.Nataraj, learned counsel for the prospective purchaser, third respondent has filed an affidavit, dated 2/8/2018, wherein, he has submitted that he had paid a sum of Rs.10,50,000/-,

by way of D.D., to Mrs.S.Saraswathy, tenant. Details of the supporting affidavit and the receipt of Mrs.S.Saraswathi are extracted hereunder:-

"I submit that I am the prospective purchaser in respect of an immovable property situated at No.244/2B, Flat No.207, Block D, 2nd Floor, Marigold Apartments, Raheja Enclave, Race Course, Coimbatore which is under mortgage with the 1st respondent Bank for a valuable consideration of Rs.111 lakhs. I submit that, there is a tenant by name Mrs. S. Saraswathy occupying the said property and that she paid a sum of Rs.10,50,000/- (Rupees Ten Lakhs Fifty Thousand only) as a security/ caution deposit to the mortgagors.

2. I submit that by consensus viz., petitioners, 1st respondent (Bank) and me, this Hon'ble Court directed me on 01.08.2018 to pay directly to the above said tenant, security/ caution deposit of Rs.10,50,000/- (Rupees Ten Lakhs Fifty Thousand) by means of a demand draft from and out of the sale consideration of Rs.111 lakhs.

3. I submit that, in compliance of the said direction, on 01st August 2018, I paid the sum of Rs.10,50,000/- (Rupees Ten Lakhs Fifty Thousand only) by means of demand draft bearing S.No.876255 dated 08.05.2018 drawn on Kotak Mahindra Bank, Nungambakkam Branch for a sum of Rs.9,00,000/- (Rupees Nine Lakhs only) and another demand draft No.876333 dated 01.08.2018 drawn on Kotak Mahindra Bank, Nungambakkam Branch for a sum of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) both in favour of S. Saraswathy, who acknowledged the same. The proof of such payment and a photo copy of demand drafts is filed herewith. Thus, I complied the direction of this Hon'ble Court."

RECEIPT

This is to acknowledge the receipt of a sum of Rs,10,50,000/- (Rupees ten laksh fifty thousand only) by means of demand draft bearing S.No.876255 dated 08.05.2018 drawn on Kotak Mahindra Bank, Nungambakkam Branch for a sum of Rs.9,00,000/- (Rupees Nine Lakhs only) and another demand draft No.876333 dated 01.08.2018 drawn on Kotak Mahindra Bank, Nungambakkam Branch for a sum of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) as per direction of the Hon'ble High Court, Madras on 01.08.2018 in W.P.No.18264 of 2018 from N. Harisankar residing at Door No.37, C.P. Garden, Tharapakkam, Thandalam Post, Chennai - 600 122, which is the refund of security/ caution deposit for the premises situated at No.244/2B, Flat No.207, Block D, II nd Floor, Marigold Apartments, Raheja Enclave, Race Course, Coimbatore, which is under my occupation and the said deposit was made with the owner of the property namely., Mr. V. Bhaskar and Mrs. Hemasree. Further I state there is no money due from the premises owners Mr. V. Bhaskar and Mrs. Hemasree whatsoever. I hand over the vacant possession of the said premises to the Bank by 31.08.2018.

4. Mrs S.Saraswathi, tenant has also filed a supporting affidavit, dated 2/8/2018, acknowledging receipt of Rs.10,50,000/-. Affidavit, dated 2/8/2018, of Mrs.Saraswathi, is extracted hereunder:

> 2. I submit that the third respondent, the prospective purchaser in respect of an immovable property situated at No.244/2B, Flat No.207, Block D, 2nd Floor, Marigold Apartments, Raheja Enclave, Race Course, Coimbatore which is under mortgage with the 1st respondent Bank for a valuable consideration of Rs.111 lakh. Consequently, as per the direction of the Hon'ble High Court the prospective purchase as paid a sum of Rs.10,50,000/- (Rupees Ten Lakhs Fifty Thousand only) as a security/ caution deposit to the mortgagors.
>
> 3. I submit that, in compliance of the court's direction, on 01 August 2018, the prospective purchaser has paid the sum of Rs.10,50,000/- (Rupees Ten Lakhs Fifty Thousand only) by means of demand draft bearing S.No.876255 dated 08.05.2018 drawn on Kotak Mahindra Bank, Nungambakkam Branch for a sum of Rs.9,00,000/- (Rupees Nine Lakhs only) and another demand draft No.876333 dated 01.08.2018 drawn on Kotak Mahindra Bank, Nungambakkam Branch for a sum of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) both in favour me, and I acknowledged the same. However, as the TAMIL Month AUDI is inauspicious for

entering into new house, I find it very difficult to enter into a new house. Therefore I am constrained to pray permission to retain the house till 31st August 2018 under any circumstances and for whatsoever reasons I will not seek extension of time and I deliver vacant possession on or before 31st August 2018."

5. In both the receipt and affidavit, dated 2nd August 2018, Mrs.Saraswathy-tenant, has categorically stated that she would handover possession of the said premises, to the authorised officer, IDBI Bank Limited, by 31/8/2018.

6. Earlier, proposed buyer has filed an affidavit, dated 20/7/2018, stating that he would pay the entire amount of Rs.1,11,00,000/-, in two equated instalments and will make the first instalment, on 7/8/2018. Now, the learned counsel for the prospective buyer seeks extension of time for payment of the first instalment, by 10/8/2018, but made it clear that the second instalment would be made on or before 20/8/2018, as assured earlier. Submission of the learned counsel for the proposed buyer is placed on record.

7. First instalment of Rs.48.50 lakhs, shall be paid on or before 10/8/2018. Second instalment of a further sum of Rs.48.50 lakhs shall be paid on or before 20/8/2018. Earlier, on 23/7/2018, we observed that to show bona fides of the prospective purchaser, he must pay the entire amount of Rs.1.11 crores in two equated instalments. After deliberation, Bank has agreed to receive Rs.1.05 crores, after deducting the advance amount of Rs.10,50,000/-, to be paid by the prospective buyer to the tenant, which has been done.

8. On this day, prospective buyer has also taken a Demand Draft, bearing No.876332, dated 8/2/2018, drawn in favour of IDBI Bank Limited, for Rs.3,50,000/-. On payment of Rs.97 lakhs, as agreed to be paid, by the prospective purchaser, in two equated instalments, the said amount be appropriated, as against the outstanding debt with interest due thereon. Bank is directed to return the title and other documents, pertaining to the subject property, mortgaged with the Bank, so as to enable the writ petitioner/borrower, to execute a sale deed, in respect of the said property, to and in favour of the proposed buyer Mr.N.Harisankar, within a period of one week, thereafter.

9. Mrs.Saraswathi, residing at No.244/2B, Flat No.207, Block D, Second floor, Marigold Apartments, Raheja Enclave, Race Course, Coimbatore, tenant, is directed to handover physical possession to the prospective buyer, as

per the affidavit of undertaking filed before this Court, failing which, it is made clear that the matter will be viewed seriously, warranting action, under the provisions of the contempt of Courts Act, if any. Before parting with, we make it clear that for realisation of any balance debt amount, it is open to the Bank to seek recourse in the manner known to law.

10. With the above direction, writ petition is disposed of. No costs.

Sd/--
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Authorised Officer
IDBI Bank Limited
Opp to St.Joseph's School
Trichy Road
Coimbatore 641 018.

2. The Authorised Officer
IDBI Bank Limited
Dr.Balasundaram Road
Off: Avinashi Road
ATT Colony
Coimbatore 641 018.

+1 cc to Mr.SHIVAKUMAR Advocate SR.NO. 53373

+1 CC TO MR.THIYAGARAHAN Advocate SR.NO. 53313

+1 CC TO MR.K.N.NATARAJ Advocate SR.NO. 53373

W.P.No.18264 of 2018

VSN II(CO)
ASK(16/08/2018)