

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.07.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.17742 of 2013

and

M.P.No.2 of 2013

N.Veerappan

..Petitioner

vs

1.The Authorized Officer,
The Tamil Nadu Industrial Co-operative Bank Ltd,
Thalamuthu-Natarajan Building, CMDA Office Complex,
No.1, Gandhi Irwin Road, Egmore, Chennai - 8.

2.The Branch Manager,
The Tamil Nadu Industrial Co-operative Bank Ltd,
Salem Branch,
9, Kamarajar Colony, R.V.Complex,
Peramanur Main Road,
Near Four Roads, Salem - 7. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in respect of the impugned auction sale proceedings in respect of the property belongs to the petitioner as published in the Daily Thanthi News Paper dated 14.06.2013 in Sl.No.2 Loan No.91 is concerned and quash the same.

For Petitioner : Mr.R.Nalliyappan

For Respondents : Mr.N.Diwan Kattuva

WEB COPY
O R D E R

The auction sale notice issued by the respondent in Daily Thanthi News Paper dated 14.06.2013 in Sl.No.2 Loan No.91 is sought to be quashed.

2.The writ petitioner states that he borrowed a sum of Rs.3,00,000/- (Rupees three lakhs only) for his business purposes

from the second respondent Bank, which is a co-operative Bank, registered under the provisions of the Tamil Nadu Cooperative Societies Act, 1983(hereinafter referred to as "the Act"). The petitioner states that he borrowed the loan amount by depositing the total deeds of the House(House Mortgage Loan) belongs to the petitioner. However, the petitioner was not in a position to repay the monthly installments and committed defaults.

3.The learned counsel for the petitioner states that the petitioner had already paid a sum of Rs.2,00,000/-(Rupees two lakh only) and made a request for one time settlement. However, the request made by the petitioner for one time settlement was rejected by the respondents. Thereafter, the writ petitioner made a request to re-schedule the loan amount, enabling him to settle the loan dues. However, the petitioner failed in getting such re-scheduling of the loan amount. Consequently, the respondents have initiated action to auction the mortgaged property. In this regard, the sale notice was issued in the Daily Thanthi Newspaper on 14.06.2013. Challenging the same, the present writ petition has been filed.

4.The impugned sale notice has been issued by the respondents and the respondent is a cooperative society, registered under the provisions of "the Act". A Cooperative Society, registered under "the Act" is not a "State" within the meaning of Article 12 of the Constitution of India. Thus, the writ petitioner has to approach the competent authorities under the provisions of the above said Act and thereafter, approach the judicial forums. Section 90 of "the Act" deals with disputes. The competent authority notified to entertain the Suits under Section 90 of "the Act" is exercising the quasi judicial powers. Thus, the authority competent is empowered to conduct an enquiry by recording evidences and documents by the respective parties. The nature of powers provided to the competent authority under Section 90 of "the Act" is akin to that of a Civil Court and therefore, the authority competent is empowered to conduct a trial/enquiry for the purpose of deciding such disputes.

5.Admittedly, the writ petitioner borrowed a loan amount from the Cooperative Society and failed to repay the loan amount in accordance with the terms and conditions of the contract. Such disputed question of facts can never be decided in a writ proceedings under Article 226 of the Constitution of India. Further, the Cooperative Society being not a "State", no writ petition can be entertained and it is left open to the writ petitioner to approach the competent authority under the provisions of "the Act".

6.In this view of the matter, the merits raised in the

present writ petition cannot be adjudicated by this Court in the present writ proceedings. Thus, the writ petition stands dismissed as not maintainable. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

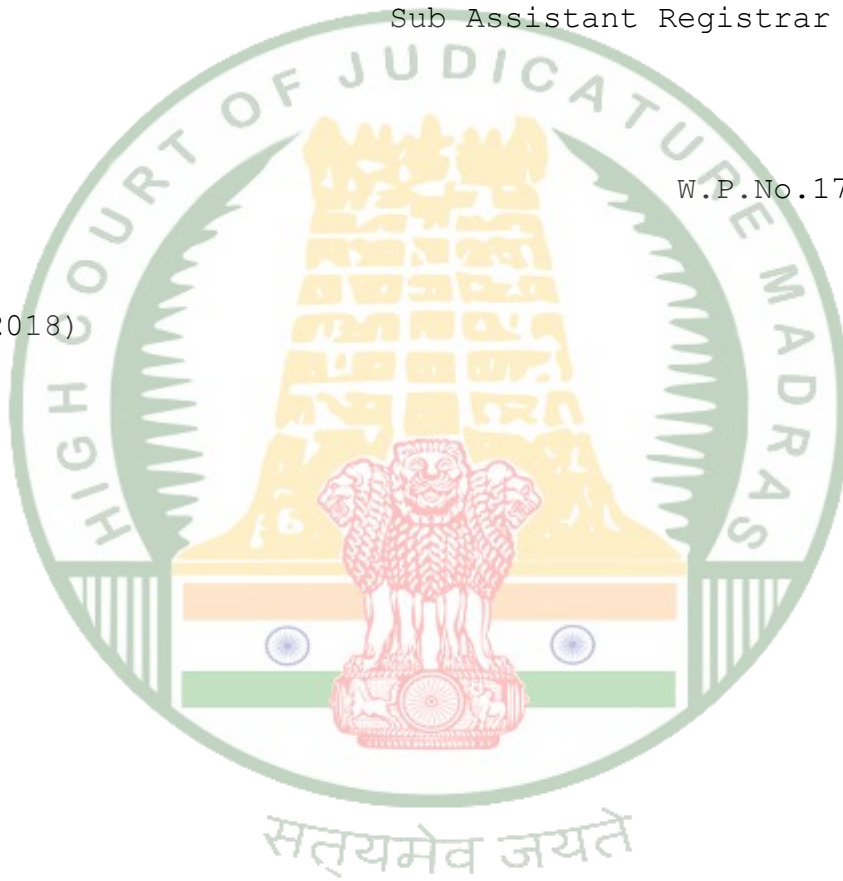
//True copy//

Sub Assistant Registrar

kak

W.P.No.17742 of 2013

GN(20/07/2018)



WEB COPY