



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.10.2018
CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P (MD) No.21259 of 2018
and WMP No.19095 of 2018

S.K.V.Bricks
Rep. By its Proprietor S.Karikalan
S/o.Surulirajan
Vaiyampatti Main Road
Marudhupandian Nagar
Kariyapatti
Virudhunagar District.

... Petitioner

vs.

Tamilnad Mercantile Bank Ltd.,
Rep. By its Branch Manager/Authorized Officer
Madurai Main Branch
(Regional Office)
No.51 East Avani Moola Street
Madurai - 1

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus to forbear the respondent from conducting the Auction sale for the property owned by the petitioner comprised in Survey No.8/1B (Old Survey No.8/1) an extent of 1 Acre 35 ½ cents of Kattukuthagai Karisalkulam Village, Kariyapatti Taluk, Virudhunagar District scheduled on 15.10.2018, without ascertaining the proper market value of the property in terms of SARFAESI Act.

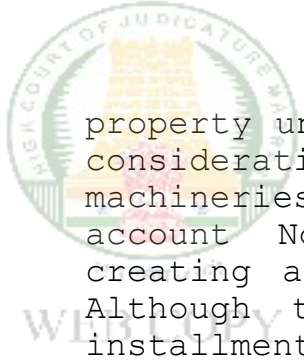
For Petitioner : Mr.R.Aravindan
For Respondent : Mr.N.Dilipkumar

ORDER

(Order of the Court was made by **T.RAJA, J.**)

This writ petition has been filed for a Mandamus to forbear the respondent from conducting the Auction sale for the property owned by the petitioner comprised in Survey No.8/1B (Old Survey No.8/1), having an extent of 1 Acre 35½ cents of Kattukuthagai Karisalkulam Village, Kariyapatti Taluk, Virudhunagar District, scheduled on 15.10.2018, without ascertaining the proper market value of the property in terms of SARFAESI Act.

2. Learned counsel for the petitioner submitted that the petitioner is a Proprietor of an Industry engaged in manufacturing bricks. It is further submitted that having purchased the said



property under a registered sale deed dated 12.12.2003 for valuable consideration, they have availed a sum of Rs.15 lakhs towards machineries and a sum of Rs.12 lakhs as cash credit under loan account Nos.002700460100644 and 00270050900473 respectively by creating an equitable mortgage in favour of the respondent Bank. Although they have paid regularly the loan amount by way of installments, there was a default and in view thereof, they suffered a demand notice under the provisions of SARFAESI Act under Section 13(2) on 22.01.2014 and followed by a possession notice dated 23.04.2014 under Section 13(4) of the said Act. Learned counsel further submitted that since the petitioner's loan account was declared as NPA, the respondent Bank approached the Tribunal in O.A.No.807/2006 against the property in question and suppressing the material fact that there has been a pendency of their Original Application on the file of the learned Debt Recovery Tribunal, the respondent Bank have also moved an application under Section 14 of the said Act before the District Collector and District Magistrate behind the back of the petitioner and obtained an order for taking physical possession of the property to enable the respondent Bank to bring the same in public auction. As the respondent Bank has wrongly obtained an order from the District Collector and District Magistrate under Section 14 of the Act on 14.07.2018, the petitioner has been advised to come to this Court, by filing the present writ petition.

3. When the matter was listed before this Court on 10.10.2018, the learned counsel for the petitioner submitted that they were prepared to deposit 30% of the loan amount on or before 22.10.2018. This Court, accepting the request of the petitioner that he is prepared to deposit 30% of the loan amount, granted time till today (22.10.2018). However, when the matter is taken up today, the learned counsel for the petitioner is unable to show any bonafide.

4. On the other hand, learned counsel for the respondent Bank submitted that as per the order passed by this Court directing the respondent Bank to proceed with the auction without confirming the sale, public auction was held on 15.10.2018 and the highest bidder has also deposited initial amount of 25% of the sale consideration and he is also awaiting for payment of the balance sale consideration, but for the pendency of the matter, he is not able to make the balance amount.

5. Since the petitioner has not complied with the conditional order, we are not inclined to entertain this writ petition. Therefore, the writ petition fails and the same is dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)



To

The Branch Manager/Authorized Officer
Tamilnad Mercantile Bank Ltd.,
Madurai Main Branch
(Regional Office)
No.51 East Avani Moola Street
Madurai - 1

+1cc to Mr.Dilipkumar Advocate in SR.No.91333
+1cc to Mr.Aravindan Advocate in SR.No.91302

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22.10.2018

RR
NM SV SAR3 31.12.2018 3P 4C