

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.07.2019

CORAM

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.16584 of 2010

P.G.Jayapathy

.Petitioner

Vs

1. The Authorized Officer / Chief Manager,
Indian Bank, Circle Office,
Vellore 632 004, Vellore District.

2. The Branch Manager,
Indian Bank,
Sholinghur,
Vellore District.

...Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the respondents neither to handover the physical possession of property situated at S.No.1089/01, Part New Layout near Tiruttani Road, Tiruvallur Street, Wallajha Taluk, Vellore District by receiving appropriate balance amount from the petitioner nor to pay the EMD amount of Rs.76,000/- to the petitioner with appropriate interest from date of payment of EMD amount till the repayment to the petitioner.

For Petitioner : Mr.B.Gopalakrishnan

For Respondents : Mr.P.V.Muralidhas

ORDER

Heard the learned counsels appearing on either side and perused the materials available on record.

2. The petitioner has come forward with this Writ Petition for issuance of a Writ of Mandamus, directing the respondents to handover the physical possession of the property situated at

S.No.1089/01, Part New Layout near Tiruttani Road, Tiruvallur Street, Wallajha Taluk, Vellore District.

3. The learned counsel for the petitioner would state that pursuant to the notification issued by the respondent on 17.09.2007, the petitioner participated in the auction held on 27.09.2007 and he was declared as successful bidder. On the date of auction, he paid Rs.76,000/- towards EMD. When the Writ Petitioner was ready to pay the balance sale consideration, there was no response from the respondent-Bank and hence, he sent representations and notice. Since no favourable order was passed, the present Writ Petition has been filed.

4. In the counter affidavit filed by the respondents, it has been stated that the respondent Bank initiated SARFAESI proceedings and issued a sale notice and the petitioner participated in the public auction and paid EMD of Rs.76,000/- on the date of auction, i.e., on 27.09.2007.

5. It is further stated that as per the terms and conditions of the auction, successful bidder has to remit the balance sale consideration within a period of 15 days, but the petitioner failed to pay the same, however, he sent a letter on 28.03.2009, requesting the Bank to give interest for the EMD made on 27.09.2007. Hence, he prayed for dismissal of the Writ Petition.

6. The learned counsel for the petitioner would urge that the petitioner had repeatedly approached the respondent to pay the balance sale consideration, which was denied by the respondent.

7. Per contra, the learned Standing Counsel for the respondent would state that the petitioner after remitting EMD on 27.09.2007, did not approach the Bank to pay the balance sale consideration. The learned Standing Counsel would state that now, if the petitioner approaches the respondent Bank, they may consider to return the EMD amount of Rs.76,000/- along with interest.

8. In the matter on hand, though the learned counsel for the petitioner submitted that the petitioner has been approaching the respondent Bank to pay the balance sale consideration, but no proof has been filed for making attempt to pay the balance sale consideration.

9. In the light of the above facts, the petitioner is not entitled for the relief sought for in the Writ Petition. Hence, the Writ Petition fails and the same is dismissed. However, in the light of the submissions of the learned Standing Counsel for the respondents, the petitioner is permitted to approach the

respondent Bank for the refund of the EMD amount along with interest and the same shall be considered by the respondents forthwith. No costs.

Pvs

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

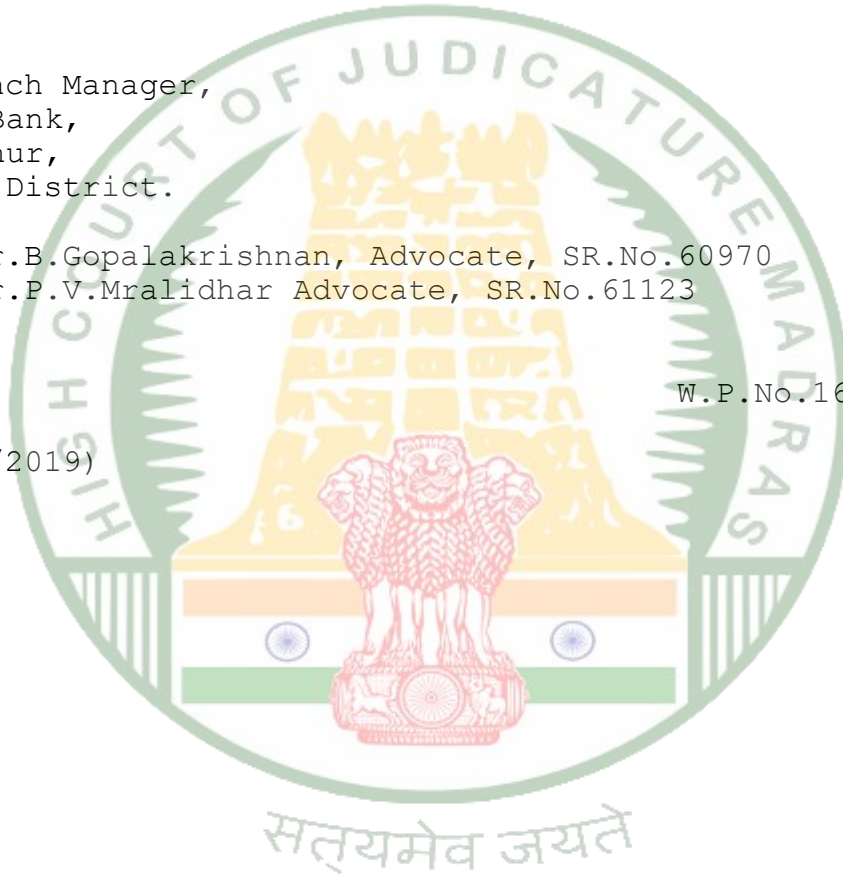
1.The Branch Manager,
Indian Bank,
Sholinghur,
Vellore District.

+1cc to Mr.B.Gopalakrishnan, Advocate, SR.No.60970

+1cc to Mr.P.V.Mralidhar Advocate, SR.No.61123

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Kak(16/09/2019)



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