IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2019

CORAM :

THE HON'BLE DR.VINEET KOTHARI, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.29289 of 2019

Rangiah Chettiar and Kempammal Trust,
rep. by Managing/Founder Trustee Chickraj,
83, Ranga Nilayam,
Alms House Road,
Ootacamund,
The Nilgiris. .. Petitioner

-vs-

1.The Authorised Officer & Asst. General Manager,
Punjab National Bank - AGMO Branch,
No.774, Oppanakara Street,
Coimbatore-641 001.

2.The Branch Manager,
Punjab National Bank - AGMO Branch,
No.774, Oppanakara Street,
Coimbatore-641 001. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus directing the first respondent to refund the sum of Rs.1,41,00,000/- (One Crore and Forty One Lakhs) with an interest of 18% p.a. from the date of purchase to the petition Trust within a stipulated time.

For Petitioner : Mr.S.Mukunth
for M/s.Sarvabhauman Asso.

WEB COPY

ORDER

(Order of the Court was made by The Hon'ble Acting Chief Justice)

The petitioner, Rangiah Chettiar and Kempammal Trust, auction purchaser from the respondent Punjab National Bank under the provisions of the Securitisation and Reconstruction of

Financial assets and Enforcement of Security Interest Act, 2002 (in short "SARFAESI Act"), has filed the present writ petition in this Court with the following prayer:

> "For all the reasons stated above it is therefore prayed that this Hon'ble Court may be pleased to issue a Writ, Order or Direction in the nature of a Writ of Mandamus to direct the 1st respondent to refund the sum of Rs.1,41,00,000/- (One Crore and Forty One Lakhs) with an interest of 18% P.A. from the date of purchase to the petitioner Trust within a stipulated time and pass such other or further orders as this Hon'ble Court may deem fit and proper in the circumstances above and thus render justice."

2. The learned counsel for the petitioner, Mr.S.Mukunth, urged before us that the respondent Punjab National Bank has failed to disclose the encumbrance on the property in question by way of attachment order issued by the Debts Recovery Tribunal, Coimbatore in O.A.No.607 of 2017 (IDBI Bank Limited, Raja Street, Coimbatore v. Shyamala Prabhu and 1 other) and secondly, there was a difference in the measurement of the property in question put to auction and sold to the petitioner Trust at the highest bid of Rs.1,41,00,000/-. According to the learned counsel, the said amount has been paid by the petitioner.

3. The learned counsel for the petitioner also brought to the notice of this Court the sale certificate executed by the respondent Bank under Rule 9(6) of the Security Interest (Enforcement) Rules, 2002, which, inter alia, also contains a Clause that the sale of the property was made on 'as is where is' and 'as is what is' basis, on the acceptance of the successful bidder that they will satisfy encumbrances, if any, on the said property, without recourse to the Bank. The said sale was duly confirmed by both parties by execution of the sale certificate and also counter-signed by the petitioner Trust.

4. The learned counsel for the petitioner has drawn our attention to Rule 8(7) of the Security Interest (Enforcement) Rules, 2002 as well as Rules 9(9) and 10 thereof. The said Rules envisage notice of sale should disclose description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor. The Authorised Officer under Rule 9(9) of the said Rules has to deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7). Sub-rule (10) of Rule 9 states that the certificate of sale issued under sub-rule (6) shall specifically mention whether the purchaser has purchased the immovable secured asset

WEB COPY

free from any encumbrances known to the secured creditor or not.

5. Having heard the learned counsel for the petitioner, we are satisfied that firstly the sale of the property in question was made by the respondent Bank on 'as is where is' and 'as is what is' basis and, therefore, it enjoins upon the auction purchaser a duty to investigate into the matter about the encumbrance on the said property, if any, on the principle of caveat emptor or buyer be aware. Secondly, even if there is an encumbrance on the said property, the buyer, the present petitioner herein, apparently agreed to clear that encumbrance without recourse to the respondent Bank. Therefore, in view of the said agreement between the parties, the petitioner cannot be permitted to wriggle out of the said contract by way of the present writ petition and seek refund of the amount. The writ petition is, thus, devoid of merits and is liable to be dismissed as such.

6. In view of the above, the present writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CJ Conf)

//True copy//

Sub Assistant Registrar

bbr

To:

1.The Authorised Officer & Asst. General Manager,
Punjab National Bank - AGMO Branch,
No.774, Oppanakara Street,
Coimbatore-641 001.

2.The Branch Manager,
Punjab National Bank - AGMO Branch,
No.774, Oppanakara Street,
Coimbatore-641 001.

+1cc to M/s.Sarvabhauman Asso, Advocate SR.No.86289

W.P.No.29289 of 2019

RSK(CO)
GMY(01/11/2019)

सत्यमेव जयते
WEB COPY
https://hcservices.ecourts.gov.in/hcservices/