



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
and
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.(MD)No.12688 of 2019

and

W.M.P.(MD)Nos.9426; 9427 & 10005 to 10007 of 2019

Mr.Balakrishnan

: Petitioner

Vs.

1.The Presiding Officer,
Debts Recovery Tribunal,
IV Floor, Kalyani Towers,
Melur Main Road, Madurai.

2.The Authorised Officer,
Indian Bank, Thuraiyur Branch,
No.170, Bharathy Theatre Complex,
Trichy Main Road,
Thuraiyur - 621 010.

3.Mrs.A.Mahalakshmi

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records pertaining to the E-Auction sale conducted by the second respondent on 04.03.2019 and the consequential sale certificate issued by the second respondent in favour of the third respondent dated 26.04.2019 and quash the same and consequently direct the second respondent to accept the payment of Rs.59,00,000/- towards discharge of entire dues and release the documents to the petitioner.

For Petitioner : Mr.K.K.Senthilvelan

For R-2 : Mr.Pala Ramasamy

For R-3 : Mr.D.Sadiq Raja

**ORDER**

[Order of the Court was made by **K.RAVICHANDRABAABU, J.**]

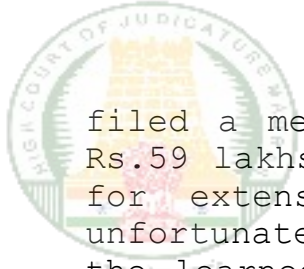
The petitioner has challenged the E-auction sale conducted by the second respondent, on 04.03.2019 and a consequential sale certificate issued by the second respondent in favour of the third respondent dated 26.04.2019. The petitioner further seeks for a direction to the second respondent to accept the payment of Rs.54 lakhs towards the discharge of entire dues and release the documents to the petitioner.

2. Pending disposal of the writ petition, a sale had taken place on 30.05.2019 under document No.2649/2019 on the file of Registrar, Thuraiyur. Therefore, the petitioner seeks to amend the prayer in the writ petition to challenge the said sale deed as well.

3. Heard Mr.K.K.Senthilvelan, learned counsel appearing for the petitioner; Mr.Pala Ramasamy, learned counsel appearing for the second respondent Bank and Mr.D.Sadiq Raja, learned counsel appearing for the third respondent.

4. It seems that one M/s.PSN Jewellery, represented by its proprietor Mr.P.Senthilnathan and M/s.Rasi & Co., represented by its partner Mr.C.Perumal borrowed credit facilities from the second respondent bank and the petitioner stood as guarantor and mortgaged his property to secure the loan availed by the said borrowers. It is seen that since the borrowers defaulted in repayment of the loan, the second respondent Bank initiated proceedings under the SARFAESI Act. Consequently, a notice under Section 13(2) of the above said Act was issued on the petitioner. It is further seen that the petitioner, aggrieved over the sale notice, filed an appeal in S.A.No.704 of 2018 before the first respondent Tribunal. Pending disposal of the appeal, the first respondent Tribunal granted an interim order of stay on 03.01.2019 subject to condition that the petitioner should deposit a sum of Rs.8,34,000/- as first installment on or before 04.02.2019 and further sum of Rs.8,34,000/- as second installment on or before 05.03.2019. It is stated that though the petitioner complied with the payment of first installment within the time, however, was not in a position to pay the second installment due to some difficulties. Consequently, the sale proceedings have taken place, where the third respondent has become the successful auction purchaser. Accordingly, the second respondent issued a sale certificate in favour of the third respondent on 26.04.2019 followed by execution of sale deed on 30.05.2019. Before execution of the sale deed, the petitioner has approached and filed the above writ petition for the relief stated supra.

5. Mr.K.K.Senthilvelan, learned counsel appearing for the petitioner submitted that the petitioner wants to settle the entire dues to the second respondent bank and to that effect, they also



filed a memo before the Tribunal by attaching a Demand Draft for Rs.59 lakhs. It is further stated that the petitioner's application for extension of time for making the second installment was unfortunately rejected by the first respondent Tribunal. Therefore, the learned counsel contended that since the petitioner is showing *bona fide*, the third respondent cannot be permitted to take possession of the subject matter property of the auction, from the petitioner, pending disposal of S.A.No.704 of 2018.

6.On the other hand, the learned counsel appearing for the respondents 2 and 3 submitted that since the petitioner has failed to comply with the conditional order granted by the first respondent Tribunal, he cannot be shown any indulgence and therefore, the sale conducted and followed by registration of sale deed, need not be interfered with.

7.The learned counsel for the petitioner at this juncture submitted that the petitioner is ready and willing to agitate the matter before the Tribunal by filing the amendment petition, in view of the subsequent event viz., the sale. Therefore, he submitted that till the appeal is decided by the first respondent Tribunal, the petitioner's interest may be protected, insofar as the possession of the property auctioned is concerned.

8.The learned counsels for the respondents 2 and 3 on the other hand submitted that since the third respondent has paid huge sum of Rs.2,50,25,000/- (Rupees Two Crores Fifty Lakhs and Twenty Five Thousand Only), towards the sale consideration, the possession should be handed over to the second respondent at the earliest possible time.

9.Upon hearing both sides and perusing the facts placed before us, it is evident that the challenge made by the petitioner against the sale notice is pending before the first respondent Tribunal in S.A.No.704 of 2018. Needless to say that it is for the first respondent Tribunal to consider the merits of such appeal and decide the same in accordance with law after hearing both the parties. No doubt, in the meantime, the sale has taken place and the third party's interest is now created. But the fact remains, as admitted by the respondents 2 and 3, that the possession of the property sold in auction still remains with the petitioner.

10.As it is admitted by both sides that the possession is still with the petitioner and it is not in dispute that the very sale notice issued by the second respondent Bank is put to challenge before the first respondent Tribunal by way of filing S.A.No.704 of 2018, which is still pending, this Court is of the view that all the contentions raised by the respective parties have to be raised before the first respondent Tribunal, which in turn, shall consider the same and decide on merits and in accordance with law. Therefore, it is for the petitioner to approach the Tribunal and pursue the appeal for its early disposal. Since the petitioner is seeking to



amend the prayer in the said appeal, in view of the subsequent development, viz., the sale of the property auctioned, we are inclined to dispose of this writ petition only by passing the following order, without expressing any view on the merits of the claim made by the respective parties:-

(a).The petitioner is permitted to file amendment petitions, if any, before the first respondent Tribunal within a period of two weeks from the date of receipt of a copy of this order;

(b).The first respondent Tribunal shall take up the appeal thereafter and pass orders on the same on merits and in accordance with law, after hearing both the parties, within a period of six weeks thereafter; and

(c).Till the first respondent Tribunal decides the appeal as stated supra, the status-quo as on today in respect of the possession of the subject matter property shall be maintained by all the parties.

(d) The time limit fixed by this Court for the disposal of the appeal, should be adhered to strictly by all the parties, without seeking for adjournment at any point.

(e)The amount received from the auction purchaser shall be kept by the Bank in a separate interest bearing account, till the disposal of the appeal by the first respondent Tribunal.

No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

/ True Copy /

Sub Assistant Registrar (CS-III)

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To

1.The Presiding Officer,
Debts Recovery Tribunal,
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Melur Main Road, Madurai.

2.The Authorised Officer,
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+1 CC to M/s.D.SADIQ RAJA, Advocate (SR-71322[F] dated 25/06/2019)

+1 CC to M/s.PALA.RAMASAMY, Advocate
(SR-70820[F] dated 24/06/2019)

+1 CC to M/s.K.K.SENTHILVELAN, Advocate
(SR-70852[F] dated 24/06/2019)

W.P. (MD) No.12688 of 2019

ES/26.06.2019/5P/6C