



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.07.2019

CORAM:

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**THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P(MD)NO.14629 OF 2019

and

W.M.P(MD)No.11071 of 2019

Mrs.A.Dilshad Begum

:Petitioner

.vs.

1.The Authorised Officer,
Indian Overseas Bank,
Kumbakonam Main Branch(0044),
Kumbakonam, Tanjore District.

2.The Chief Manager,
Indian Overseas Bank,
Kumbakonam Main Branch(0044),
Kumbakonam, Tanjore District.

3.M/s.AMD Housing Developers,
represented by its Managing Partner,
Mr.H.Ansar Ali,
No.89, Nageswaran South Street,
Kumbakonam - 612 001.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus forbearing the respondents 1 and 2, their men, agents and representatives or any other person claiming under them from proceeding with e-auction sale on 2.7.2019 or any other subsequent date in respect of the Petitioner's property which were not included in the schedule to the Demand Notice, dated 2.6.2016 under Section 13(2) and Notice dated 24.8.2016 issued under Section 13(4) of the SARFAESI Act and pursuant to the release of the primary and collateral security by the Bank.

For Petitioner : Mr.H.S.Mohamed Rafi

For Respondents : Mr.N.Dilip Kumar
1 and 2 Standing Counsel

For Respondent-3 : Notice dispensed with

**O R D E R***********

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

Mr.N.Dilip Kumar learned counsel takes notice for the respondents 1 and 2. Since this Writ Petition is being disposed of without affecting the interest of the third respondent in any manner and in view of the fact that the present Writ Petition is filed challenging auction notice issued against the Petitioner alone under Section 13(4) of the SARFAESI Act,2002, notice to the third respondent is dispensed with.

2.Heard the learned counsel appearing for the Petitioner and the learned counsel appearing for the respondents 1 and 2/Bank.

3.It is seen that the third respondent promoted property and sold it to various buyers by constructing flats. The Petitioner is one among such buyer. It is further stated that between the third respondent and the respondents 1 and 2/Bank, there were proceedings initiated under the SARFAESI Act, for recovery of loan amount, which ultimately ended in passing an order in S.A.No.578 of 2016, dated 11.5.2017 by the Debt Recovery Tribunal, directing the parties to hold mutual negotiations towards the settlement of the loan amount. It is stated that before passing such order, some payments were made by the third respondent. The present notice under challenge is issued against the Petitioner, who also availed loan from the respondents 1 and 2/Bank, which according to the Petitioner has been fully discharged.

4.The learned counsel for the respondents 1 and 2/Bank, however, disputes the above contention of repayment by the Petitioner.

5.We are not inclined to go into the merits of the claim made by the respective parties, as We are of the view that the Petitioner has to work out his remedy as against the impugned auction proceeding only before the Debt Recovery Tribunal by filing appropriate application and not by filing the present Writ Petition with the relief as stated supra.

6.The learned counsel for the Petitioner, at this juncture, submitted that since the auction is scheduled on 2.7.2019 (tomorrow), the Petitioner can be given a breathing time to approach the Debt Recovery Tribunal and to raise all the contentions. The learned counsel further submit that without prejudice to her contention before the Debt Recovery Tribunal, the Petitioner would also show her bona-fide by making some payment.

7.Considering the claim made in the impugned auction notice namely, a sum of Rs.38,20,281.20/- and the fact that the auction is scheduled to take place tomorrow(02.07.2019) and in view of the



undertaking given by the Petitioner through her counsel before this Court that she would approach the Debt Recovery Tribunal and agitate the matter immediately, We are of the view that the following order would met the ends of justice, without affecting the interest of both parties.

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8. Accordingly, this Writ Petition is disposed of, without expressing any view on the merits of the claim made by the respective parties, with the following directions:

(a) the Petitioner shall pay a sum of Rs.10 lakhs (Rupees ten lakhs only) to the respondents 1 and 2/Bank within a period of two weeks from today.

(b) the respondents 1 and 2/Bank shall post-pone the auction scheduled on 2.7.2019.

(c) the Petitioner shall approach the concerned Debt Recovery Tribunal and file appropriate application challenging the auction proceedings by raising all the contentions within a period of two weeks from today.

(d) if the Petitioner fails to make such payment of Rs.10 lakhs to the respondents 1 and 2/Bank, the respondents 1 and 2/Bank is at liberty to issue fresh auction notice and proceed accordingly by collecting cost and expenses towards the fresh auction notice from the Petitioner.

(e) granting of the above interim protection to the Petitioner shall will not prejudice the mind of the Debt Recovery Tribunal, while considering the claim of the respective parties, in the event of Petitioner approaches the Debt Recovery Tribunal and files the application as stated supra, as it is for the Debt Recovery Tribunal to consider the said application on merits and in accordance with law.

No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar (CS)

vsn

To

1. The Authorised Officer,
Indian Overseas Bank,
Kumbakonam Main Branch (0044),
Kumbakonam,
Tanjore District.



2.The Chief Manager,
Indian Overseas Bank,
Kumbakonam Main Branch(0044),
Kumbakonam,
Tanjore District.

+1CC TO MR.N.DILIP KUMAR, Advocate Sr. No.72572
+1CC TO MR.H.S.MOHAMMED RAFI, Advocate Sr. No. 72520

ORDER MADE IN
W.P (MD) NO.14629 OF 2019
and
W.M.P (MD) No.11071 of 2019
01.07.2019

TR (01.07.2019) 4P 5C