WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 28.03.2019
CORAM:
THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P.(MD)No.7268 of 2019
and
W.M.P.(MD)Nos.5816 and 5817 of 2019

E.Muneeswaran ... Petitioner

Vs

The Chief Manager,
Union Bank of India,
Madurai Main Branch,
Town Hall Road, Madurai. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the respondent's jewel auction notice published in Dinamani, Daily Newspaper, Madurai Edition dated 22.03.2019 stating that the jewels realting to the petitioners will be auctioned on 29.03.2019 at about 10.30 A.M. at respondent bank branch.

For Petitioner : Mr.T.K.Gopalan
For Mr.PT.S.Narendravasan
For Respondent : Mr.V.S.Karthi

ORDER

The writ petitioner had availed jewel loan from the respondent bank. The petitioner could not liquidate the said jewel loan. Therefore the respondent bank brought the pledged jewels to auction. They issued notice dated 09.04.2018. The said auction notice was questioned by the writ petitioner in W.P.(MD)No.8398 of 2018. This Court dismissed the writ petition on 13.03.2019. Thereafter the respondent bank issued a fresh auction notice dated 22.03.2019. The fresh auction notice issued by the respondent bank is put to challenge in this writ petition.

2.Heard the learned counsel on either side.

3.Inasmuch as the issuance of impugned notice dated 22.03.2019 is pursuant to the order dated 13.03.2019 made in W.P.(MD) No.8398 of 2018. I am of the view that the impugned auction notice cannot be challenged. But then, in view of the emergence of a few facts, I have to make a clarification here. The writ petitioner herein is a director of Selvaraj Tex Private Limited. The said company had availed loan from the respondent bank. The property standing in the name of the company are the subject matter of SARFAESI proceedings initiated by the respondent bank. The petitioner's request is that the impugned auction can be put on hold and the subject jewel loan liability can be adjusted against the

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

sale profit relates from the sale offered company's property.

4.I am of the view that this is only an argument that can apply to one's sense of sympathy. When the petitioner's jewel loan liability has not been liquidated, it is always open to the respondent to the respondent bank to bring the pledged jewels to auction. It would not be proper on the part of the Court to interfere with the course of action adopted by the respondent bank. But then, the petitioner's counsel would point out that the bank is proposing to adjust the excess amount against the liability of the company in which the petitioner is a director. It is true that by order dated 13.03.2019 in W.P.(MD)No.8398 of 2018, I had observed that Section 171 of the Contract Act provides for such an adjustment. I had made such an observation in view the submission made by the respondent bank that the petitioner herein was having an other loan account. Now it appears that the other loan account is not standing in the name of the petitioner individually and that it is only a corporate loan account. The petitioner does not appear to have given any personal guarantee. Be that as it may, the said issue can be left open. The respondent is permitted to bring the pledged jewels to auction. After liquidating the jewel loan liability, the excess amount will not be appropriated by the respondent bank. This Court gives liberty to the writ petitioner to file fresh petition in this regard. This Court makes it clear that no final opinion has been expressed regarding appropriation of the excess amount.

5.With these clarifications, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

+1 CC to M/s.PT.S.NARENDRAVASAN, Advocate (SR-57439[F] dated 28/03/2019)

ias

W.P.(MD)No.7268 of 2019

DS/ /SAR- (12.04.2019) 2P 2C

https://hcservices.ecourts.gov.in/hcservices/