BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **22.11.2019**

CORAM:

THE HONOURABLE MR.JUSTICE **M.GOVINDARAJ**

W.P.(MD)No.23224 of 2019

M/s.Janaki Investments Pvt. Ltd.,
Represented by its Director,
Mr.A.Karthik : Petitioner

Vs.

The Authorized Officer,
Central Bank of India, Rajah Muthiah Mandram,
First Floor, Dr.Ambedkar Road,
Madurai-625 020. : Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order dated 25.09.2019 passed by the respondent bank and quash the same as illegal and direct the respondent bank to refund the sum of Rs.3,43,750/- with interest at 10% per annum, within the time frame as fixed by this Court.

For Petitioner : Mr.A.Sivaji
For Respondent : Mr.N.Dilip Kumar

ORDER

The petitioner has become a successful bidder in the auction sale conducted by the respondent bank. Pursuant to the order of the Debts Recovery Tribunal, the respondent bank issued a sale notice on 12.11.2018, after duly following the procedures of serving notice on the defaulter and publishing it in the newspapers. The petitioner paid the EMD on 12.12.2018 and submitted his bid on 28.12.2018 for the auction to be conducted on 28.12.2018. On 27.12.2018, the borrower had obtained stay before the Debts Recovery Tribunal. The factum of grant of interim order was also communicated to the petitioner on 28.12.2018, while directing him to deposit 25% of the sale consideration as per the tender conditions. The petitioner, after receiving the communication, has deposited the money on 28.12.2018. Since the Court proceedings did not conclude and the sale was not confirmed, he made a request for refund on 11.07.2019. Since the bank has been dodging the matter, on the pretext that the proceedings before the Debts Recovery Tribunal will be over in the nearest future, he approached this Court by way of the present Writ Petition.

2. Heard both sides.

3. On consideration of the dates and events, it is very clear that there was no encumbrance prior to the date of publication of sale notice known to the secured creditor i.e., the respondent bank. In fact, stay order granted by the Judicial Forum cannot be considered as an encumbrance. However, the auction purchaser cannot be made to wait till the disposal of the proceedings.

4. Considering the deposit of money in December, 2018 and request for refund of the same in July, 2019, it cannot be said that the respondent bank had unduly protracted the matter. Since the petitioner has deposited the money with open eyes, he cannot attribute any *mala fides* or delay on the part of the respondent. However, whenever a request for refund is made, it is reasonable that the bank refunds the money.

5. In view of that matter, a direction is issued to the respondent bank to refund the amount deposited by the petitioner towards 25% of the sale consideration to the tune of Rs.3,43,750/- [Rupees Three Lakhs and Forty Three Thousand and Seven Hundred and Fifty only], without interest, within a period of two weeks from the date of receipt of a copy of this order.

6. The Writ Petition is disposed of with the above direction. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

The Authorized Officer,
Central Bank of India, Rajah Muthiah Mandram,
First Floor, Dr.Ambedkar Road,
Madurai-625 020.

+1 CC to M/s.A. SIVAJI, Advocate (SR-100829[F] 25/11/2019)
+1 CC to M/s.N. DILIP KUMAR, Advocate (SR-100992[F] 25/11/2019)

Order made in
W.P.(MD)No.23224 of 2019
Dated: 22.11.2019

SML
SDS (19.12.2019) 2P 4C