

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

WP.No.1325/2020 & WMP.No.1582/2020

Arun Nallusamy ... Petitioner

Versus

1.The Chief Manager
Bank of India,
Kurichi Industrial Estate SME
SB Towers, Sundarapuram,
Coimbatore 641 024.

2.The Branch Manager
Bank of India,
Kurichi Industrial Estate SME
SB Towers, Sundarapuram,
Coimbatore 641 024.

3.The District Collector cum District Magistrate
Coimbatore. ... Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of mandamus directing the 1st respondent to compensate the petitioner for the loss caused by paying Rs.15,42,744/- the amount paid by the petitioner to the credit of the loan amount A/c.8201550000002 from 31.01.2019 to 30.11.2019 and to pay an interest for Rs.45,00,000/- at 12% p.a., till 02.12.2019.

For Petitioner : Mr.K.P.S.Palanivelrajan

ORDER

[Order of the Court was made by M.SATHYANARAYANAN,J.,]

(1)The writ petitioner is the auction purchaser of the land and building situate at SF.No.1/429, Site No.25, Door No.1/15A,

Shrinagar Layout, Bharathi Colony, Coimbatore District and according to him, on account of the default committed by the original borrower, proceedings were initiated under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [in short 'the SARFAESI Act'] and in the E-Auction sale, the petitioner participated as a bidder and for the purpose of purchasing the property, he also availed the 'Smart Housing Loan' from the very same respondent/Bank.

(2) The learned counsel for the petitioner would submit that the petitioner is a Non-Residential Indian and he purchased the said property for a sale consideration of Rs.1,70,50,000/- and though the Sale Certificate dated 31.12.2018 was registered on 08.01.2019 on the file of the Sub Registrar, Peelamedu, Coimbatore, only symbolic possession was given and no actual physical possession of the property was given and the physical possession of the property was given to the petitioner only on 02.12.2019. It is pointed out by the learned counsel for the petitioner that admittedly, the petitioner has to service the loan availed by him from the respondent/Bank by paying interest and on account of the delay of nearly 11 months, he has been put to great hardship and financial difficulty and therefore, the respondent/Bank is bound to compensate the petitioner for the belated handing over of the physical possession and hence, prays for appropriate orders.

(3) This Court has considered the arguments advanced by the learned counsel for the petitioner and also perused the materials placed before it.

(4) A perusal of the communication sent by the respondent/Bank dated 02.12.2019 would disclose that for getting the physical possession of the property, the respondent/bank has invoked section 14[1] of the SARFAESI Act and vide order dated 19.11.2019, passed by the District Magistrate, Coimbatore, it got the physical possession and in turn, handed over the keys to the petitioner on 02.12.2019. A further perusal of the materials would disclose that the Sale Certificate dated 31.12.2018 was issued in favour of the petitioner and it was registered as Document No.95 of 2019 on the file of the office of the Sub Registrar, Peelamedu, Coimbatore, on 08.01.2019. The petitioner, before filing the writ petition, did not submit any representation to the respondent/Bank pleading for compensation.

(5) In the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, this Court permits the petitioner to submit a detailed representation with supporting documents to the respondent/Bank

within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the respondent/Bank is directed to consider the said representation on merits and in accordance with law and pass appropriate orders within a further period of four weeks thereafter and communicate the decision taken, to the petitioner herein.

(6)The writ petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Chief Manager
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Coimbatore 641 024.
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- 3.The District Collector cum District Magistrate
Coimbatore.

+1cc to M/s.K.P.S.Palanivel Rajan, Advocate Sr.5819

WP.No.1325/2020

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srg 06/03/2020