

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.No.2108 of 2020
and W.M.P.No.2468 of 2020

1.Sujatha.V

2.G.Vishwanathan

... Petitioners

Vs.

The Authorized Officer,
M/s.Tamilnad Mercantile Bank Ltd.,
Aminjikai Branch,
D.No.650. Poonamallee High Road,
Aminjikai, Chennai - 600 029.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorari calling for the records on the file of the respondent leading to the auction notice dated 20.12.2019 and quash the same.

For Petitioners : Mr.S.V.Pravin Rathinam

For Respondent : Mr.V.Chandrasekaran

O R D E R

(Order of the Court was made by M.SATHYANARAYANAN, J.)

The petitioner had availed financial assistance and in view of the defaults committed, the respondent - Bank had initiated proceedings under the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act) and issued a sale notice dated 06.11.2019 for sale of the secured assets on "as is where is", "as is what is" and "whatever there is" for recovery of Rs.1,22,19,304.52p as on 16.12.2019 and the auction in respect of the first sale did not fructify and therefore, issued the second sale notice dated 20.12.2019.

2.The petitioner made a challenge to the second impugned sale notice dated 20.12.2019 by stating among other things that the said notice was despatched only on 26.12.2019 fixing the

date of auction on 10.01.2020 and the mandatory period as stipulated in terms of proviso to Rule 9(1) have not been complied with and hence, has filed the above Writ Petition.

3. Per contra, the learned counsel appearing for the respondent - Bank would submit that the mandatory provisions as contemplated under the SARFAESI Act was followed in full letter and spirit and the remedy open to the petitioner is to file an appeal before the jurisdictional Debts Recovery Tribunal and prays for dismissal of the Writ Petition.

4. This Court heard the rival submissions and perused the materials placed before it.

5. The impugned second sale notice dated 20.12.2019 placed in the materials submitted before this Court would indicate that it was despatched on 26.12.2019 and served on the borrower on 27.12.2019 and the above auction sale was effected within 15 days on 10.01.2020.

6. The learned counsel appearing for the respondent - Bank would submit that the second sale was successful and the successful bidder had remitted 25% of the bid amount.

7. In the light of the above facts and circumstances, this Court is of the considered view that the impugned sale notice dated 20.12.2019 warrants interference. In the result, the Writ Petition is allowed and the impugned sale notice dated 20.12.2019 is set aside and it is open to the respondent - Bank to go for fresh auction for sale of the secured assets in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (C.S.VIII)

/True Copy/

Sub Assistant Registrar

To

The Authorized Officer, M/s. Tamilnad Mercantile Bank Ltd.,
Aminjikai Branch, D.No. 650. Poonamallee High Road,
Aminjikai, Chennai - 600 029.

+1 cc to M/s. V. Chandrasekaran, Advocate Sr.No. 13192

AKM/12.03.2020/2P-3C /

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