IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2020

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MRS.JUSTICE R.HEMALATHA

W.P.No. 9471 of 2020
& W.M.P.Nos. 11574 & 11575 of 2020

N.Durgambal .. Petitioner

vs

1. Indian Overseas Bank,
   Rep by its Authorized Officer,
   20/21,Kamarajar Street,
   Kanchipuram- 631 501.

2. Indian Overseas Bank
   Rep by its Branch Manager,
   Selayur Branch,
   Velachery Main Road,
   Selayur CHennai- 600 073.

3.P.Rajan

4.R.Gayathiri .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus calling for the first respondent comprised in order dated 16.06.2020 and the consequential order dated 23.06.2020 in Ro/ LAW /426/ 2020-Na.KA.No. 258/ 2016 /F1, quash the same as arbitrary, illegal, unconstitutional and consequently direct the respondents to forthwith refund the sum of Rs.8,79,250/- to petitioner with interest at the rate of 12% p.a from 12.03.2020.

For Petitioner .. Mr.S.Ramesh

For Respondents .. Mr.Benjamin George
for R1 and R2
R3 & R4 - No such person

ORDER

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

The petitioner herein is the successful auction purchaser in the auction conducted by the first respondent on 28.02.2020. Accordingly, she deposited the initial amount of 10%. Second instalment of 15% was also deposited by her. Pursuant to the confirmation letter dated 12.03.2020, she was asked to pay the remaining amount within a period of fifteen days.

2. The petitioner sought for loan from one of the Regional Offices of respondents 1 and 2. As it took some time, the petitioner sought for further time for compliance towards the payment of the remaining amount. The loan was sanctioned on 17.06.2020. However, on 16.06.2020, the order impugned has been passed by the first respondent cancelling the confirmation in favour of the petitioner while rejecting the request for extension of time for payment of the remaining amount of Rs.26,37,750/-. The impugned order also says that a further time in accordance with the Rules was already granted. Resultantly, the petitioner was informed of the forfeiture by mail dated 23.06.2020. Challenging the aforesaid proceeding, the present writ petition has been filed.

3. Learned counsel appearing for the petitioner submitted that the loan was sanctioned only on 17.06.2020 by the second respondent while the impugned order was passed on 16.06.2020. The petitioner did make a request within a reasonable time. The second respondent is nothing but a branch of the first respondent. The petitioner is ready and willing to pay the amount now. Thus, the impugned orders are to be set aside and consequently the sale certificate will have to be issued. Alternatively, as sought for in the petition, the refund will have to be given to the petitioner.

4. Learned counsel appearing for the respondent/Bank submitted that the cancellation of confirmation has nothing to do with the sanction of loan. Both the transactions cannot be compared with each other. The petitioner was given further time in accordance with the Rules. Under those circumstances, the impugned orders passed cannot be interfered with.

5. The fact remains that the petitioner's loan was sanctioned on 17.06.2020 while the cancellation order was passed on 16.06.2020. The petitioner made an application immediately. The petitioner further complied with the initial deposit of 25% in accordance with the terms of the contract. However, the petitioner does not have any vested right to seek extension in a commercial transaction.

6. In view of the pandemic situation, we do not know as to whether higher amount would be fetched in the proposed auction or not. Despite an alternative mode of service effected, the names being printed, the persons have not come before this Court nor laid any challenge to the proceedings initiated and concluded.

7. In light of the discussion made above, we deem it appropriate to pass the following order by taking into consideration the interest of all the three parties, namely, the petitioner, Bank and the borrower:

(i) the proposed auction shall go on;

(ii) the petitioner is also permitted to take part in the auction;

(iii) if the amount is higher, then the same can be confirmed, in which case, the petitioner's initial deposit will have to be returned after deducting the expenses that might accrue in conducting the re-auction;

(iv) even if the petitioner is successful in the re-auction for a lesser amount, she will not get any vested right;

(v) if the auction of the property not already in favour of the petitioner goes for a lesser amount, the same shall not be confirmed, in such case, the earlier auction in favour of the petitioner will have to be confirmed on her paying the remaining amount within a period of one week thereafter;

(vi) the petitioner shall not be permitted to withdraw any amount in the account in which the loan has been sanctioned till the same is paid in favour of the first respondent in the event of the subsequent auction not going through.

(vii) If the subsequent re-auction is confirmed, the second respondent can cancel the loan in accordance with law in which case the Bank shall ask the petitioner to make the resultant payment.

8. The writ petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.



-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Authorised Officer,
   Indian Overseas Bank,
   20/21,Kamarajar Street,
   Kanchipuram- 631 501.

2. The Branch Officer,
   Indian Overseas Bank,
   Selayur Branch,
   Velachery Main Road,
   Selayur Chennai- 600 073.

+1cc to Mr.S.Ramesh, Advocate in SR.28260

W.P.No. 9471 of 2020

pvs(co)
rv(15/9/2020)