

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2020

CORAM

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

W.P.No.10137 of 2020
and
W.M.P.No.12328 of 2020

Shanthi

... Petitioner

Vs.

1. The Authorized Officer,
Punjab National Bank,
Secured Creditor,
No.774, Oppanakara Street,
Coimbatore - 641 001.
2. R.Rajendran
S/o.Ramalingam
No.301, Saptagiri Apartment,
Thovasi Nagar, Velandipalayam,
Kovilmedu, Coimbatore - 641 025.
Partner of M/s.Hi 5 Enterprises, Coimbatore.
3. Mary Maragatham,
W/o.Jayapal,
No.16/66, Fire Service Employee Colony,
Gandhi Nagar, Avinashi Road,
Tirupur - 641 603.
Partner of M/s.Hi 5 Enterprises, Coimbatore. ...Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the 1st Respondent E.Auction notice dated 18.07.2020 issued under the Securitization and Re-construction of Financial Assets and Enforcement of Security Interest Act 2002 read with Rule 8 (6) of the Security Interest Enforcement Rules 2002 and quash the same and further direct the 1st Respondent/Bank not to take any coercive steps in bringing the petitioner property 11th ward in T.S.No.1187 (part) Block 22 Site No.9 at Door No.39/69, Sir Shanmugham Road, R.S.Puram, Coimbatore - 641 002 for E-Auction on 10.08.2020.

For Petitioner .. Mr.T.Mohan
for K.Balakrishnan

For Respondents .. Mr.M.L.Ganesh for R1

ORDER

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

Challenging the e-auction notice issued on 18.07.2020, the petitioner has come forward with this petition solely resting the case on the basis of the letter issued by the Authorized officer agreeing to hand over the documents on receipt of Rs.27 lakhs.

2. Mr.M.L.Ganesh, learned Standing Counsel appearing for the first respondent- Bank submitted that the abovesaid letter has been issued without any authority and an enquiry is already on with regard to the same. There is no difference between the guarantor and the borrower in law. The petitioner has to avail the alternative remedy available under Section 17 of the SARFAESI Act. When the petitioner approached this Court on the earlier occasion by way of writ petition in W.P.No.27544 of 2019, he has been informed accordingly and therefore, liberty has been given to the petitioner to exhaust the said remedy.

3.By way of reply, Mr.T.Mohan, learned counsel for the petitioner submitted that the issuance of letter is not in dispute. Therefore, the circumstance under which the letter has been issued will have to be explained. The situation available on the earlier occasion is different from the one to which this Court is concerned. It is not, as if, the petitioner has suppressed the earlier writ petition. This writ petition has been filed seeking writ of certiorarified mandamus and appropriate orders will have to be passed.

4.The fact remains, the sale has been withdrawn. Therefore, nothing survives for adjudication on that ground. Further, the question as to whether the contentious letter issued on what circumstances and with the authority or not cannot be gone into by us in this writ petition. Perhaps that could be a matter which can be raised before the Tribunal and to be considered on exchange of the pleadings. We do not wish to express anything on the same including the entitlement of the bank to withdraw the letter subsequently. Suffice it is to state that the sale proposed auction has not been taken place and therefore, the respondent-Bank can only take steps afresh to bring the property for auction henceforth. If that happens, the

petitioner is at liberty to challenge it before the Debts Recovery Tribunal. Accordingly, all the issues are left open on fact and law and the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

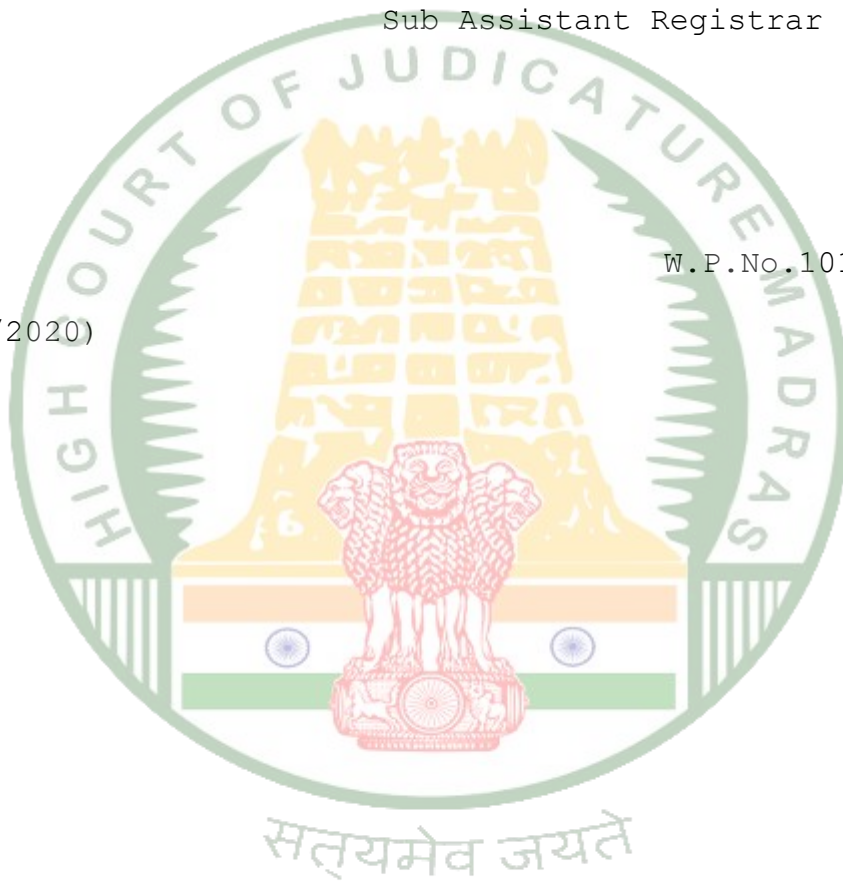
//True Copy//

Sub Assistant Registrar

raa/kmk

VSNI I (CO)
RMP (11/11/2020)

W.P.No.10137 of 2020



WEB COPY