IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.No.35811 of 2019
and
W.M.P.Nos.36702 & 36705 of 2019

L.Sabary ... Petitioner

Vs

1.Repco Home Finance Limited,
Puducherry Branch,
No.40A, Vivek Arcade,
Vallalar Salai, Kamaraj Nagar,
Puducherry - 605 011,
Rep. by its
Authorised Officer.

2.The Deputy Commercial Tax officer - II,
Commercial Taxes Department,
Office of the Commissioner (CT),
Puducherry.

3.City Union Bank Ltd.,
Rep. by its Authorised Officer,
No.149, T.S.R.(Big) Street,
Kumbakonam - 612 001.

4.Maruti Suzuki India Limited having its
Registered Office at
No.1, Nelson Mandela Road,
Vasant Kunj, New Delhi - 110 070,
Rep. by its
Authorised Signatory.

5.The District Registrar,
Revenue Complex (Annex),
Saram,
Puducherry. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified

Mandamus, calling for the records relating to the E-auction Sale Notice dated 10.12.2019 on the file of the 1st respondent which was published in the news paper viz., "The New Indian Express", Villupuram Edition on 14.12.2019 quash the same and direct the 1st respondent to issue Fresh E-Auction Sale Notice after following the procedure laid down under rule 8 (7)(a) of the Security Interest (Enforcement) Rules, 2002.

For petitioner : Mr.S.Doraiswamy

For Respondents : Mr.A.Ilangovan for R1.
Mrs.N.Mala for R2.

O R D E R

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

The petitioner in the affidavit filed in support of this petition would aver among other things that the first respondent has issued an E-Auction sale notice, dated 10.12.2019, bringing the secured assets given by the borrower, viz., Mrs.P.Mangaiyarcarrassy, co-borrower viz., Mr.Perisamy, to realise the sum of Rs.2,02,82,417/- & Rs.1,00,93,758/-, as on 26.02.2019. It is a specific case of the petitioner that he made his own verification and came to know that one of the properties which is being brought for sale, in T.S.Nos.30 & 31, R.S.No.7/2, 7/3 Puducherry Mudaliarpet Commune, Village No.37, Pudupalayam Revenue Village at Anna Nagar Extension, was owned by one Vasanthy and she obtained loan from the third respondent bank and for non-payment of the same, the third respondent had brought the said property, by way of public auction, under the provisions of SARFAESI Act, in the year 2011. The original owner of the property, viz., Vasanthy, was in arrears of commercial tax payable to the second respondent to the tune of Rs.21 Crores. The second respondent who has also filed a Writ Petition, in W.P.No.11199 of 2011, questioning the said auction notice issued by the third respondent and obtained interim order in respect of item number 4 of the auction sale notice alone.

2.It is further stated by the petitioner that the fourth respondent has also obtained arbitrary award against Vasanthy in Arbitration Case No.1817 of Indian Council of Arbitration and obtained an order and without causing due verification, properties are sought to be sold in “as is where is condition”.

3. Mr.S.Doraisamy, learned counsel for the petitioner in the light of the fact that the petitioner on his own verification became aware of the encumbrances and also brought to the knowledge of the first respondent in the form of

representation dated 16.12.2019, it is obligatory on the part of the first respondent to issue addendum to the E-Auction Sale Notice, after following the procedure laid down under Rule 8 (7) (a) of the Security Interest (Enforcement) Rules, 2002 to become aware of the subsisting encumbrances and prays for appropriate orders.

4.Per contra, Mr.A.Ilangovan, learned Counsel appearing for the first respondent would submit that it is the settled position of law that the secured creditors viz., the first respondent bank is having priority in claim over the Government and if any left over properties are available, it is always open to the petitioner to lay a claim and further, in the facts and circumstances of the case, the petitioner cannot be construed as a party affected and would further add that the petitioner is acting as the biggest of the original borrower and prays for dismissal of the petition.

5.Mrs.N.Mala, learned Counsel for the second respondent would submit that the matter is still at large, the priority of the sale tax over the claim of the secured creditors, the issue relating to the liability of the claim to recover the sales tax due,viz., the secured creditors, is still at large and the matter is pending before the Hon'ble Supreme Court of India and further would aver that a sum of Rs.21 crores is due and payable to the commercial tax authorities.

6.This Court has paid its best attention to the rival submissions and also perused the materials placed on record.

7.The Hon'ble Supreme Court of India in 2014 (3) LW 289 (SC), Mathew Varghese Vs.M.Amritha Kumar and others", dealt that when a secured debt of an immovable property is brought for sale, the intending purchasers should know the property, the extent of liability, and any other encumbrances pertaining to the said property and any other material as it would only mean that intending purchaser should have the entire details about the property brought for sale.

8.This Court, in a catena of decisions reported in 2017 (4) MLJ 513 (S.Shanmuganathan Vs.Authorised Officer, Indian Overseas Bank) and the decision reported in Jain Logistics Vs.Authorised Officer, Syndicate Bank" and held that the Rules 8(A) and 86 (F) of SARFAESI Act, 2002 are mandatory in nature and the purchaser should be put on notice about all the encumbrances and other materials so as to enable him to take a decision with regard to his participation in the Auction and the amount quoted in his bid. The disclosure is not an empty formality. It is further held that the financial institutions while issuing sale notification discharge a statutory duty and it is not expected of the Bank to state that the purchaser shall be aware of the encumbrances.

9.In a recent Judgment of the Division Bench of this Court reported in V.Sridhar Vs.The Authorised Officer, Indian Bank, Guindy {2018 (1) WLR 145}, has distinguished the meaning of the terms 'As is where is condition' and 'As is what is condition' and held that the Bank is duty bound to disclose the encumbrances attached to the properties and litigations or occupation by a Tenant, if there is any lis or lien attached to the said property. It was further observed that merely by including the clause i.e., "as is where is" or "as is what is" condition stated in the sale notice does not obviate the Bank from disclosing the encumbrances attached to the property brought for in auction.

10.Now coming to the case on hand, the endeavor of the petitioner has resulted in the subsisting encumbrances in the form of sales tax dues and that apart, the attachment in pursuant to the arbitral award as once the said fact is brought to the knowledge of the first respondent in the form of representation, it is obligatory on the part of the first respondent Bank to issue addendum to the e-auction sale notice bringing to the knowledge of the intending purchaser about the said encumbrances, so as to enable the auction purchaser to take a call in that regard.

11.The learned Counsel for the petitioner would submit that the petitioner, unless succeeds in the public auction, has no locus standi to question the e-auction.

12. Though this Court is inclined to agree with the said submission and even by eschewing consideration, in the light of the said position initiated in the above cited Judgments, it is obligatory on the part of the first respondent Bank to disclose specifically the encumbrances or at least should indicate that they are not aware of any subsisting encumbrances and merely putting the phrase/word “as is where is condition” and “as is what is condition” is against the provisions of Rule 8 (7) (a) of the Security Interest (Enforcement) Rules, 2002.

13. In the result, this Writ petition is disposed of and the first respondent is directed to issue addendum to the E-Auction notice with regard to the subsisting encumbrances in respect of some of the properties brought for sale. For the reason, auction sale is fixed on 21.01.2020 incorporating the

above cited encumbrances, so as to enable the auction purchasers to take a call as to their intention to bid in the said public auction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ay/mvs
To

1. The Authorised Officer,
Repco Home Finance Limited,
Puducherry Branch,
No.40A, Vivek Arcade,
Vallalar Salai, Kamaraj Nagar,
Puducherry - 605 011.

2. The Deputy Commercial Tax officer - II,
Commercial Taxes Department,
Office of the Commissioner (CT),
Puducherry.

3. The Authorising Officer,
City Union Bank Ltd.,
No.149, T.S.R.(Big) Street,
Kumbakonam - 612 001.

4. The Authorised Signatory,
Maruti Suzuki India Limited having its
Registered Office at
No.1, Nelson Mandela Road,
Vasant Kunj, New Delhi - 110 070.

5. The District Registrar,
Revenue Complex (Annex),
Saram, Puducherry.

+1cc to Mr.A.Ilangovan, Advocate Sr.541
+1cc to Mr.S.Doraisamy, Advocate Sr.597
+1cc to the Government Pleader Sr.913

W.P.No.35811 of 2019
and
W.M.P.Nos.36702 & 36705 of 2019

ll[co]
srg 24/02/2020