BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 18.03.2020
CORAM:
THE HON'BLE MR.JUSTICE S.S.SUNDAR
and
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD)No.5637 of 2020

Prince ... Petitioner

Vs.

1.The Branch Manager,
Indian Bank,
Thillainagar Branch,
Trichy.

2.The Authorised Officer/Chief Manager,
Indian Bank,
Thillainagar Branch,
Trichy. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to accept the payment of the petitioner the sum of one crore and fifty eight lakh being the bid amount in the auction sale conducted on 11.02.2020 by considering and passing of the appropriate orders on the representation dated 28.02.2020 of the petitioner within a time frame as fixed by this Court.

For Petitioner : Mr.N.R.Balaji

For Respondents : Mr.R.Pandivel, standing counsel for Indian Bank-R1 & R2

O R D E R

(Order of the Court was made by **S.S.SUNDAR, J.**)

This writ petition is filed for issuing a writ of mandamus, directing the respondents to accept the payment of the petitioner a sum of Rs.1,58,00,000/- (Rupees one crore and fifty eight lakhs only) being the bid amount in the auction conducted on 11.02.2020.

2.The petitioner is the borrower and upon offering a property as security, it is admitted that the 1st respondent has sanctioned a sum of Rs.1,50,00,000/- (Rupees one crore and fifty lakhs only) to the petitioner. Since the loan was not repaid promptly as per the loan agreement, it appears that the bank has declared the account as NPA and by invoking provisions of SARFAESI Act. A notice under Section 13(2) of the SARFAESI Act was issued on 10.04.2018, calling upon the petitioner to repay the entire loan amount within 60 days.

3.It is the case of the petitioner that the petitioner has visited the 1st respondent bank on many occasions, requesting them to give the petitioner adequate time to settle the entire loan amount.

4.It is admitted that the property was brought to auction after publishing sale noticing in the manner prescribed in law. The sale was not completed for want of bidders on two earlier occasions. Third time, the sale notice was issued on 22.01.2020, fixing a sum of Rs.1,48,00,000/- (Rupees one crore and forty eight lakhs only) as upset price. The auction was scheduled on 11.02.2020. There were bidders and the successful bidder has offered a sum of Rs.1,58,00,000/- (Rupees one crore and fifty eight lakhs only) to the property mortgaged by the petitioner and the auction was also confirmed upon payment of 25% of the bid amount in favour of the auction purchaser. Now, the petitioner has come forward with this writ petition after making a representation to the bank that they are willing to pay the amount that was offered by the successful bidder in the third auction.

5.This Court is unable to see any merits in this writ petition, having regard to the provisions of the SARFAESI Act and the Rules framed, particularly in relation to the sale by auction, The authorised officer is under a legal obligation to confirm the sale, if 25% of the amount is deposited within time.

6.It is stated by the learned counsel appearing for the Bank that the auction purchaser has already deposited more than 80% of the amount and time is also given for remitting the balance. It is to be noted that upon payment of the entire amount within the time stipulated or extended by the authorised officers of the bank, the sale certificate will be issued to the auction purchaser.

7.The petitioner has come forward with this writ petition to permit him to pay a sum of Rs.1,58,00,000/- (Rupees one crore and fifty lakhs only) being the bid amount in the auction sale conducted on 11.02.2020. This request cannot be considered in this writ petition as the sale has already taken place and auction purchaser has now remitted the amount and the sale has already been confirmed in favour of the auction purchaser. Upon remittance of the balance amount within the time stipulated, the sale certificate will be issued in favour of the auction purchaser.

8.This Court has no reasons to believe the bonafides of the petitioner. The petitioner did not raise any objection when the sale notice was issued earlier on two occasions. Even after the sale notice was issued on 22.01.2020, the petitioner did not object or come forward to give any offer. In such circumstances, the present writ petition, after the confirmation of sale in favour of the third party, cannot be entertained. Further, the petitioner has not impleaded the auction purchaser in this present writ petition. No lis can be decided in the present writ petition without impleading the auction purchaser as a party. The Hon'ble Supreme

Court has repeatedly held that the petitioner cannot maintain a writ petition, if he has an effective alternative remedy to challenge the sale at any stage before the Debt Recovery Tribunal under Section 17 of the SARFAESI Act. Though we expressed our views on merits in the present proceedings, we give liberty to the petitioner to raise all his objections and the Debt Recovery Tribunal, while disposing of the SARFAESI appeal and the Tribunal may consider and pass appropriate orders uninfluenced by any of the observations and findings of this Court.

9.Accordingly, this writ petition is dismissed with liberty preserved to the petitioner to challenge the sale notice dated 22.01.2020 in the manner prescribed in law. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Arul

+1 CC to Mr.R.PANDIVEL, Advocate (SR-12310[F] dated 18/03/2020)

Order made in

W.P.(MD)No.5637 of 2020

18.03.2020

VB(07.05.2020) 3P 2C