

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.3395 of 2020, 1782 and 1785 of 2021

W.P.No.3395 of 2020:

M/s.VIP Grand Properties,
rep. by its Partner E.Kandasamy,
No.5/359, State Bank Colony,
Junction Main Road,
Salem - 636 004. ... Petitioner

-vs-

M/s.Canara Bank,
Regional Office, Salem SME Branch,
rep. by its Authorised Officer,
Saradha College Main Road,
Salem - 636 016. ... Respondent

W.P.Nos.1782 and 1785 of 2021:

M/s.VIP Grand Properties,
rep. by its Partner E.Kandasamy,
No.5/359, State Bank Colony,
Junction Main Road,
Salem - 636 004. ... Petitioner

-vs-

The Authorised Officer,
Canara Bank,
Regional Office Urban Salem,
Sri Sarada Vidhyalaya School Campus,
II Floor, Fairlands,
Salem - 636 016. ... Respondent

W.P.No.3395 of 2020 filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records of the respondent in its proceedings dated 02.8.2019 and quash the same as illegal, arbitrary and violative of the provisions of the Securitisation and Reconstruction of Financial Assets and

Enforcement of Securities Interest Act, 2002, and Security Interest (Enforcement) Rules, 2002, and to consequently direct the respondent to refund the sum of Rs.1,42,27,500/- deposited by the petitioner in pursuance of auction sale conducted on 16.04.2019 till the date of realisation.

W.P.No.1782 of 2021 filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records pertaining to the Letter dated 31.8.2019 issued by the respondent forfeiting the amount paid by the petitioner towards purchase price with the respondent, quash the same and consequently direct the respondent to receive the balance sale price in a sum of Rs.1,26,82,500/- (Rupees One Crore Twenty Six Lakhs Eighty Two Thousands and Five Hundred only) from the petitioner and complete the procedures pertaining to the sale process in pursuance of the Letter of Confirmation issued by the respondent dated 16.4.2019, in respect of the properties more fully mentioned in the description of the properties in the said Letter of Confirmation dated 16.4.2019 and as is mentioned in the Schedule appended hereto.

W.P.No.1785 of 2021 filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus to call for the records pertaining to the E-Auction sale notice dated 7.1.2021 issued by the respondent by way of newspaper publication in Dinakaran, 13.1.2021 edition having circulation in Salem for the auction scheduled on 29.1.2021 in so far as the properties comprised in the description column of Sl.No.3 of the same and more fully described in the schedule appended hereto, quash the same.

For Petitioner : Mr.R.Nagasundaram
in all WPs

For Respondent : Ms.R.Sumathy
in all WPs

COMMON ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

The matter falls within a small conspectus and the parties have left it to the Court to indicate the final amount that should be paid by the auction-purchaser petitioner to the respondent secured creditor.

2. The auction of the immovable properties was conducted on April 15, 2019. The petitioner's bid was the highest and a

letter was issued by the secured creditor to the petitioner on April 16, 2019 confirming that the petitioner was the highest bidder at the auction. The amount bid was Rs.2,69,10,000/-.

3. The petitioner appears to have paid of the earnest money deposit of approximately 10% amounting to Rs.26,80,000/- immediately after the sale. A further sum of Rs.40,47,500/- was paid by May 31, 2019 together with another tranche of Rs.75 lakh. It is the admitted position that by or about May 31, 2019, a total amount of Rs.1,42,27,500/- had been paid, leaving a balance of about Rs.1.27 crore.

4. Upon the petitioner's failure to tender the balance consideration within a reasonable time, the bank sought to forfeit the amount paid and threatened the petitioner to conduct a further auction-sale of the properties. A notice in such regard was issued by the secured creditor to the petitioner on August 31, 2019. However, it does not appear that any steps were taken by the secured creditor to re-sell the properties or that any bid in such regard has been received, far less any payment on account thereof.

5. By or about March 4, 2021, the petitioner tendered a further sum of Rs.1,38,23,925/-, thus taking the total payment made by the petitioner in respect of the properties to Rs.2,80,51,425/- which included an excess amount of Rs.11,41,425/-.

6. When the matter was taken up on the last occasion, the Court suggested that to end the disputes between the parties, the petitioner may be required to pay interest for the delay in tendering the balance consideration in the event the secured creditor was agreeable to receive such additional amount and convey the properties in favour of the petitioner. The petitioner indicates that the petitioner is agreeable to pay a further sum of Rs.20 lakh, over and above the amount which has been already tendered to satisfy the bank's reasonable claim on account of interest. The bank has agreed to receive such payment and has left the matter to the Court.

7. It may be observed that a total sum in excess of Rs.1.42 crore had been tendered by the petitioner to the secured creditor within a month or so of the auction-sale. The balance outstanding was to the tune of Rs.1.27 crore. If interest on such amount at the rate of 10% is calculated, the quantum offered on behalf of the petitioner along with the excess payment of Rs.11 lakh already made should satisfy any reasonable claim of the secured creditor on account of interest.

8. Accordingly, the sale of the properties is confirmed in

favour of the petitioner at Rs.3,00,51,425/- out of which a sum of Rs.2,80,51,425/- has already been paid to the secured creditor and is acknowledged to have been received by the secured creditor. The balance amount of Rs.20 lakh in terms of this order should be tendered to the bank by way of a demand draft or banker's cheque or like instrument, not being a personal cheque, within a week from date. It will suffice if the relevant instrument is made over to advocate for the secured creditor at any convenient location. Upon such payment being made, the bank will execute a sale certificate in favour of the petitioner within four weeks from the receipt of the payment. If necessary, deeds of conveyance may be executed in favour of the petitioner on the usual terms with the stamp-duty thereon being liable to be paid by the petitioning purchaser. It is made clear that the only aspect that has been gone into herein is the dispute pertaining to the failure of the auction-purchaser to pay within time and the request of the secured creditor to accept the payment beyond the permissible period of three months from the date of auction and the reasonable compensation payable to the secured creditor for the delay in receiving the consideration.

9. W.P.Nos.3395 of 2020, 1782 and 1785 of 2021 are disposed of. There will be no order as to costs. Consequently, W.M.P.Nos.16506, 3958 of 2020, 1992, 1993, 1996, 1997 of 2021 are closed.

10. It is recorded that the secured creditor has indicated that physical possession of the properties would be handed over within a reasonable time; the only impediment being the present Covid situation. It is hoped that physical possession of the properties is made over to the petitioner within six weeks from date and subject to the balance consideration in terms of this order being paid by the petitioner.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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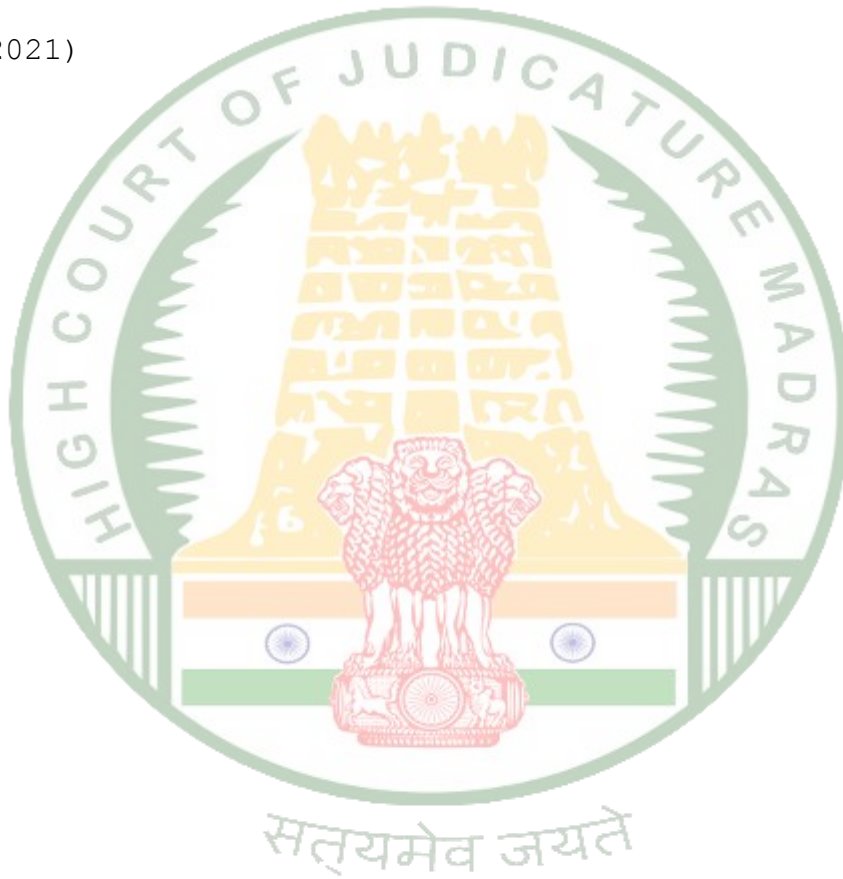
To:

- 1.The Authorized Officer,
Canara Bank,
Regional Office, Salem SME Branch,
Saradha College Main Road,
Salem 636 016.

2.The Authorised Officer,
Canara Bank,
Regional Office Urban Salem,
Sri Sarada Vidhyalaya School Campus,
II Floor, Fairlands,
Salem - 636 016.

W.P.Nos.3395 of 2020,
1782 and 1785 of 2021

PL(CO)
GN(05/05/2021)



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