

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.6092 of 2020

E.Sendhil Kumar

...

Petitioner

Vs.

The Authorised Officer
Tamilnad Mercantile Bank Limited
Chennai Aminjikai Branch
650, Poonamallee Road
Aminjikai
Chennai 600 029.

...

Respondent

Prayer: Petition under Article 226 of the Constitution of India praying for a writ of Certiorari to call for the records of the letter dated 26.02.2020 issued by the respondent and quash the same.

For Petitioner : Mr.A.V.Arun

For Respondent : Mr.V.Chandrasekaran

ORDER

(Made by SENTHILKUMAR RAMAMOORTHY, J)

The writ petitioner is an auction purchaser at an auction sale conducted by the respondent bank through its authorised officer.

2. The writ petitioner asserts that 24 cents of land out of the 92 cents that were purchased by him at such auction sale were unapproved and that this fact was not disclosed by the respondent bank in the auction sale notice.

3. The respondent bank asserts that the auction purchaser took inspection of the title documents and was fully aware that the said 24 cents were unapproved. In addition, the respondent bank contends that the sale was made on an "as is where is whatever there is" basis. Consequently, it is contended that the principle of caveat emptor would apply not only to patent, but

also to latent defects.

4. Learned counsel for the writ petitioner relies upon the judgment of this Court reported in 2010 (4) CTC 627 (Jai Logistics v. The Authorised Officer, Syndicate Bank) to contend that the bank is required to disclose all known encumbrances as per Rule 8 of the Security Interest (Enforcement) Rules, 2002, and the judgment reported in (2013) 3 MLJ 885 (N.Suresh v. Indian Bank) for the proposition that Section 55(1)(a) of the Transfer of Property Act, 1882 imposes an obligation on a seller to disclose all latent defects. This contention is refuted by learned counsel for the bank on the basis that Section 55 is subject to a contract to the contrary, and that the expression "as is where is whatever there is" constitutes a contract to the contrary. He also contends, on a demurrer, that only encumbrances need be disclosed, and that there is no encumbrance.

5. From the above narration, it is evident that both disputed questions of fact and questions of law arise for consideration in this writ petition. The undisputed position is that the auction purchaser has participated in the auction proceedings initiated by the respondent bank to bring the property to sale in terms of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The said statute, undoubtedly, provides for a statutory remedy for any aggrieved person, which would include the auction purchaser in this case.

6. In view of the fact that there is an efficacious alternative statutory remedy and keeping in mind that disputed questions of fact evidently arise in this case, and such disputed questions of fact cannot be conveniently addressed in summary proceedings by affidavit evidence, we are not inclined to exercise discretionary jurisdiction in this case.

7. Therefore, W.P.No.6092 of 2020 is disposed of, albeit without prejudice to the rights of the writ petitioner to initiate appropriate legal proceedings before the appropriate Debts Recovery Tribunal, in accordance with law. In the event such proceedings are initiated within two weeks from the date of receipt of a copy of this order, the time taken in prosecuting this proceedings may be excluded and the ground of limitation shall not be held against the petitioner. There will be no order as to costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

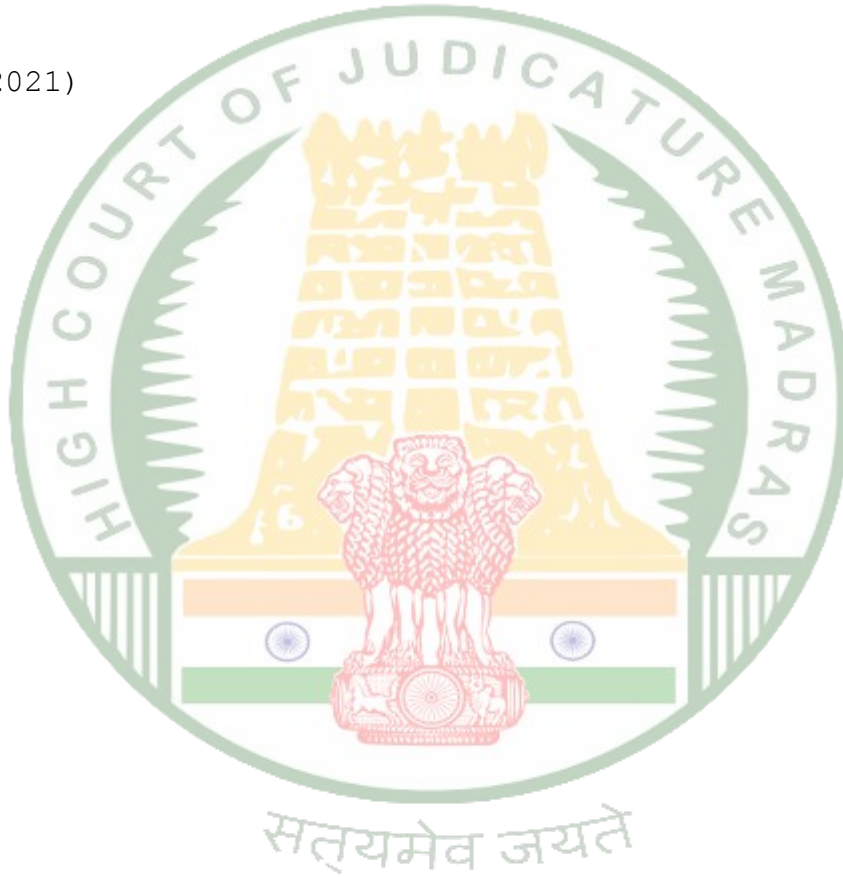
kpl

Copy to:
The Registrar,
Debts Recovery Tribunal,
Mount Road (Spencer)
Chennai.

+lcc to Mr.Arun, Advocate SR.10526

W.P.No.6092 of 2020

MG (CO)
CB(08/03/2021)



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