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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.P.No.12726 of 2021

John Prabakar

...Petitioner

Vs

1.Uma Maheswari

rep. by her Power of Attorney K.Ganapathi.

2.M/s.India Bulls Housing Finance Limited,
rep. by its Authorised Officer R.Inbasekaran,
No.20, Apex Chamber 1st Floor,
Sir Thyagaraya Road,
Chennai - 600 017.

3.C.Venkatesh Chandrasekar

4.V.Vijayalakshmi

5.M/s.E Soft Tek Private Limited,
rep. by its Managing Director C.Venkatesh,
Having its registered office
at X-41, Sivanatha Complex, 2nd Avenue,
Anna Nagar,
Chennai - 600 040.

6.Mohanasundaram

...Respondents

Prayer : Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus to direct the second respondent to refund the sum of Rs.97,52,657/- (Rupees Ninety Seven Lakhs Fifty Two Thousand Six Hundred and Fifty Seven Only) (Rs.15 Lakhs paid in December, 2008 and Rs.75 Lakhs deposited as per the order of the Hon'ble Debt Recovery Tribunal No.1 Chennai dated 27.03.2014 made in S.A.No.28 of 2014 to the Petitioner with interest till date.



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For the Petitioner : Mr.P.Chandrasekar

For the Respondents : Mr.A.E.Ravichandran
for respondent No.1

: Mr.T.Saikrishnan
for respondent No.2

: R3 & R4 - Left
R5 - Vacated
R6 - No such person

ORDER

(Order of the Court was made by P.D. Audikesavalu, J.)

The Petitioner, who was in occupation of the secured asset as tenant under the mortgagor, had been permitted by the Debts Recovery Tribunal - I, Chennai to purchase that property from the secured creditor by order dated 27.03.2014 in the proceedings in S.A. No. 28 of 2014 under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act' for short). Such sale could not ultimately go through on account of certain legal proceedings at the instance of the mortgagor, and the secured creditor has forfeited the sum of Rs. 75,00,000/- remitted by the Petitioner towards part of the sale consideration. The return of the said amount is sought by the Petitioner in this Writ Petition.

2. It has been pronounced in the ruling in Agarwal Tracom Private Limited -vs- Punjab National Bank [(2018) 1 SCC 626] that the remedy of a purchaser of a secured asset lies in challenging the action of the secured creditor in forfeiting the deposit by filing application under Section 17 of the SARFAESI Act before the jurisdictional Debts Recovery Tribunal, and that the High Court in the exercise of discretionary powers of judicial review under Article 226 of the Constitution ought to be loath in entertaining such claim. In view of such legal position, it is not possible for this Court to receive this Writ Petition, particularly when there is no acceptable explanation from the Petitioner for not availing that alternative remedy. The Petitioner is relegated to approach the jurisdictional Debts Recovery Tribunal for appropriate relief, without expression of any view by this Court on the merits of the factual controversies between the parties.



3. In the result, W.P. No. 12726 of 2021 is dismissed with the aforesaid observations. Consequently, W.M.P. Nos.13524 of 2021 is closed. There will be no order as to costs.

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Sd/-
Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar

bbr

To

The Registrar,
Debt Recovery Tribunal No.I,
Chennai.

+1cc to Mr.A.E.Ravichandran, Advocate SR.No.48912

+1cc to Mr.T.Saikrishnan, Advocate SR.No.49314

W.P.No.12726 of 2021

MG(CO)
RVM(29/09/2021)