IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.12702 of 2021

1. M/s.D.K.S.Traders,
   rep. by its Proprietor – K.Senthil Kumar
   No.72, Mariamman Koil Street,
   Nasal, Pudupattu,
   Arni – 632 301.

2. K.Senthil Kumar,
   Proprietor – M/s.D.K.S.Traders,
   No.72, Mariamman Koil Street,
   Nasal, Pudupattu,
   Arni – 632 301.

3. S.Bhavani ..Petitioners

vs.

1. The Authorised Officer,
   Tamil Nadu Mercantile Bank Ltd.,
   (Salem Region) Arni Branch,
   D.No.38, Thatchur Road,
   Arni-632 301,
   Thiruvannamalai District.

2. The Regional Manager,
   National Collateral Management Services Ltd.,
   Zonal Office, No.213/IP, Thiru Vi.Ka. Street,
   Manapakkam Main Road,
   Gerugambakkam,
   Chennai – 122.

3.Meenatchi ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to quash the sale conclusion notice dated 29.03.2021 issued by the first respondent Bank in favour of the third respondent, pursuant to their auction sale held on 29.03.2021 on the basis of the sale notice dated 09.03.2021, pending adjudication of Securitization Application No.139 of 2021 on the file of Hon'ble Debts Recovery Tribunal No.II, Chennai, wherein the sale notice dated 09.03.2021 is the subject matter of challenge, and to consequently direct the first respondent to receive the actual cash credit loan outstanding amount from the petitioners and to discharge the liabilities over the schedule properties of the petitioners.

For Petitioners : Mr.S.Gajendran

ORDER

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

The petitioners seek to challenge the sale of the secured assets furnished by the petitioners to the first respondent bank at an auction.

2. According to the petitioners, upon receiving the initial sale notice, the petitioners challenged the same before the appropriate Debts Recovery Tribunal. The petitioners claim that the petitioners were willing to pay off the debt due to the bank, but the Tribunal did not pass any interim order staying the proposed auction sale.

3. The initial auction sale did not fetch any bidder. A fresh notice was published on March 11, 2021 and the auction conducted on March 29, 2021. Since the initial sale notice did not attract any bidders, the reserve price may have been lowered and the highest bidder covered the reserve price. The contention of the petitioners is that the property is worth much more than the reserve price set therefor and the bank has not acted bona fide and has rushed to conduct the sale.

4. The challenge herein is to the letter of the bank dated March 29, 2021 by which the bank informed the petitioners that the auction sale had been confirmed at Rs.7.70 lakh and after crediting the sale amount, there was an outstanding amount in excess of Rs.75.51 lakh as at March 31, 2021.

5. No case is made out against the bank, particularly a case that would warrant interference in this extraordinary jurisdiction. The petitioners have challenged the sale notice issued, failed to obtain an interim order and there was no impediment to the bank proceeding with the sale. The bank duly conducted the initial auction whereat there were no buyers and the bank, thereupon, took steps to conduct a further auction. Due notice of the subsequent sale was published in the newspapers, including in the Times of India on March 11, 2021. The petitioners do not appear to have taken any steps against

the refusal by the Tribunal to pass any interim order or even against the subsequent sale notice published on March 11, 2021. The petitioners have waited for the property to be sold and thereafter sought to challenge the letter by which the petitioners were informed that the property had been sold.

6. In any event, there is no basis to the petitioners' grievance that the bank acted mala fide or that the bank acted in undue haste. There is a sum in excess of Rs.75.51 lakh which remains due and owing from the petitioners to the bank even after giving credit to the property that has already been sold.

7. The best course of the petitioners would be to pursue the matter pending before the Debts Recovery Tribunal and, in the unlikely event that the petitioners succeed before such Tribunal, the balance sum claimed by the bank may be appropriately adjusted. No grounds are made out at this stage for interference in the steps and measures taken by the first respondent bank in accordance with the authority available to it under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

W.P.No.12702 of 2021 is dismissed. Consequently, W.M.P.Nos.13495 and 13496 of 2021 are closed. There will be no order as to costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

sasi/bbr
To:

1. The Authorised Officer,
Tamil Nadu Mercantile Bank Ltd.,
(Salem Region) Arni Branch,
D.No.38, Thatchur Road,
Arni-632 301,
Thiruvannamalai District.

+1 CC to M/s.S. Gajendran, Advocate sr 28983.

LN(CO)
SP(13/07/2021)