IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.13341 and 13342 of 2021

K.Kayalvizhi .. Petitioner in both WPs

Vs.

The Branch Manager,
Axis Bank, Arcot Plaza, 4th Floor,
Old No.38, New No.165, Arcot Road,
Kodambakkam, Chennai. .. Respondents in both WPs

Prayer: Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus (i) WP.13341/2021 - directing the respondent to accept the Demand Draft a sum of Rs.9,77,000/- in D.D.No.057896 dated 14.06.2021 for property in item no.1 as Flat No.F-2 extent of 724 Sq.ft in the First Floor situated at in Survey No.255/2 of Sholinganallur Taluk Kancheepuram District and to execute Sale Deed in favour of the petitioner by considering the petitioner's representation dated 17.06.2021; and (ii) WP.13342/2021 - directing the respondent to accept the Demand Draft a sum of Rs.9,77,000/- in D.D.No.057895 dated 14.06.2021 for property in Item No.3 (Flat No.S-2 extend of 724 Sq.ft in the Second Floor) and to execute Sale Deed in favour of the petitioner by considering the petitioner's representation dated 17.06.2021.

For Petitioner : Mr.K.Sathish Kumar

For Respondent : Mr.R.Sreedhar

* * * * *

ORDER

(made by the Hon'ble Chief Justice)

The petitioner in either case was the highest bidder for an immovable property at an auction conducted by the respondent secured creditor under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. The petitioner made the initial deposit, but cites the lockdown during the second surge of the pandemic as the reason for the petitioner failing to make the balance payment. The auction sale in either case was conducted on February 18, 2021.

3. The secured creditor bank is represented. According to the secured creditor, it has authority under the relevant rules to extend time for the entire consideration to be deposited by a successful bidder till a period of ninety days from the date of the auction sale. According to the bank, despite notices the petitioner has not made the full payment and, as such, the bank may have to take steps for a further auction sale of the relevant properties. The bank maintains that in terms of the notice issued pertaining to the auction sale conducted on February 18, 2021, the bank is entitled to forfeit the money tendered by the petitioner. However, the law does not permit the forfeiture clause to be used as a penalty. There may be cases where an auction purchaser has deposited 5% of the consideration and cases where an auction purchaser may have deposited 95% of the amount bid. Just because there is a clause that permits forfeiture does not imply that the mere failure to pay the balance amount in both cases or even in either case will entitle the secured creditor to forfeit the entire amount that has been put in.

4. The right to forfeit must be balanced against the corresponding principle enshrined in the rule against unlawful enrichment. While an auction purchaser is liable for the further expenses incurred by the secured creditor in conducting a second auction sale, the secured creditor cannot forfeit the entire money that has been tendered without having suffered loss commensurate with the quantum of money deposited and proposed to be forfeited. A forfeiture clause, at the highest, may indicate the maximum amount that may be forfeited to compensate the other party for the breach committed by the party in default. But the amount of forfeiture, unless it is a small percentage of the total consideration, cannot be well in excess of the loss or damage suffered by the party not in breach.

5. There are times that Courts presume that they have the extraordinary authority to enlarge the time. A kind of mercy jurisdiction is also resorted to at times without the Court being mindful of the fact that the exercise of such authority may prejudice another who may not be before the Court or may amount to granting undue favour to a person merely because he has approached the Court. If the law requires the auction purchaser to pay the entire consideration within ninety days of the date of the auction, unless there are exceptional circumstances, the Court should be slow in enlarging the time for making payment since that would amount to conferring an undue benefit on a party in breach. It is true that the

pandemic and the lockdown imposed in its wake may be an extraordinary situation; but it is not as extraordinary now as it may have been perceived to be some 12 or 14 months prior to now. Further, the lockdown cannot be used as a magic wand by every defaulter to wish away the default on its part. Despite the recent lockdown during the second surge, financial transactions continued on the net and even otherwise. The petitioner in either case should have been aware of his obligation to make the payment within the time the payment was due and merely because the second surge hit after February 18, 2021 or the lockdown was imposed sometime thereafter is not, by itself, enough ground to ignore the default committed by the petitioner.

6. Accordingly, the secured creditor will be free to advertise for the fresh sale of the assets. It is made clear that the petitioner will be entitled to participate in the auction for such purpose. If the petitioner is successful once again, in respect of both the properties, and if the quantum of bid in either case is lower, it is the lower amounts that the petitioner would have to pay together with all expenses incurred by the secured creditor in conducting the fresh sale and the diminution of price together with the interest thereon from the date of the original auction. Even if the petitioner is not the highest bidder, if there is a lower amount at which either property is sold, the petitioner will have to make good the difference together with the interest from the date of the original auction till the date of payment and the reasonable costs that the secured creditor may have incurred for conducting a fresh auction.

W.P.No.13341 of 2021 and W.P.No.13342 of 2021 are disposed of accordingly. There will, however, be no order as to costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sra
To:

The Branch Manager,
Axis Bank, Arcot Plaza, 4th Floor,
Old No.38, New No.165, Arcot Road,
Kodambakkam, Chennai.

A.SK(29.06.2021)