

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.03.2020

PRONOUNCED ON : 18.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP(PD)No.2281 OF 2017

CMP.No.10753 OF 2017

(Through Video Conferencing)

1. The Authorised Officer, (Corporation Bank)  
Now Union Bank of India, Chennai-1

2. The Branch Manager, (Corporation Bank)  
Now Union Bank of India, Chennai-1

Petitioners

Vs

M/s.Blue Cherry Constructions Pvt. Limited  
by its Authorised Signatory, Rajesh Babu  
Tirupathi, AP 517503

Respondent

Prayer:- This Civil Revision Petition has been filed, under Section 227 of the Constitution of India, to strike off the suit in OS.No.781 of 2017 on the file of the IV Assistant City Civil Judge, Chennai.

For Petitioner : Mr.R.Nagasundaram

For Respondent : Mr.A.C.Kumaragurubaran

ORDER

1. This Civil Revision Petition has been filed, to strike off the suit in OS.No.781 of 2017 on the file of the IV Assistant City Civil Judge, Chennai.
2. The facts of the case are that the Defendants are the Petitioners and the Respondent is the Plaintiff. The Respondent was the successful bidder in

the e-auction held on 08.12.2016, conducted by the Petitioner Bank, in respect of the suit properties and an EMD was also made by them. There were exchange of correspondences between them. The EMD was forfeited and subsequently, a letter dated 16.12.2016 was sent, forfeiting the EMD of the Plaintiff and subsequently, a fresh advertisement was made on 14.01.2017, proposing to conduct a fresh e-auction on 16.02.2017 in respect of the very same suit properties. Hence, the suit was filed for declaration that the letter dated 16.12.2016 of the Defendant Bank, forfeiting the EMD of the Plaintiff, is null and void and for permanent injunction, restraining the Defendants from conducting e-auction of the Schedule properties. In IA.No.2124 of 2017 filed in the suit, ad-interim injunction was granted against the Defendants. In such circumstances, this Civil Revision Petition has been filed by the Defendant Bank to strike off the plaint.

3. The learned counsel for the Petitioners has submitted that since the Respondent has failed to fulfil the conditions of the sale notice, the EMD has been forfeited as per the terms and conditions of the sale proceedings and that the Trial Court erred in granting interim injunction, without assigning any valid reason and that there is no cause of action and that the suit itself is barred under Sections 34 and 54 of Chapter IV of the SARFAESI Act (Act 54 of 2002). The learned counsel has relied on **2011 3 CTC 801 Division Bench (V.Thulasi vs. IOB)**, **2014 1 SCC 479 (Jagdish Singh Vs. Heeralal and others)** and **2010 3 CTC 310 (Punjab National Bank Vs. J.Samsath Beevi and others)**.

4. The learned counsel for the Respondent has submitted that the Respondent, as a highest and successful bidder, was always ready and willing to purchase the suit properties, by remitting the balance amount and while so, the EMD has been forfeited by the letter dated 16.12.2016, which is not proper and that since the issue raised in the suit has arisen out of the contractual obligation and an EMD was also already made, the suit is maintainable and that this Civil Revision Petition, filed without availing the alternate remedy, is not maintainable.
5. This court heard the learned counsel on either side and considered their submissions and also carefully perused the materials placed on record.
6. A sale notice, dated 05.11.2016 was issued by the Petitioner Bank for conducting e-auction on 08.12.2016 in respect of the suit properties. As per the sale notice, it is clear that an EMD of 10% of the reserve price was to be made by the intending bidder and the successful bidder shall tender 25% of the amount of sale price in Cash/ DD, less the EMD and that the sale shall be subject to the outcome of SA.Nos.216 of 2015 and 217 of 2015, pending before the Debt Recovery Tribunal.
7. Having known about the said proceedings pending before the Debt Recovery Tribunal in respect of the suit properties, the Respondent has made the EMD, participated in the e-auction and succeeded in the e-auction. However, the Respondent had made a representation to the Bank, seeking for an undertaking for return of the 25% of the sale price, in case the above cases are not cleared. By the letter dated 16.12.2016, the Respondent Bank,

while denying to give such an undertaking, had forfeited the EMD made by the Respondent for violation of the terms and conditions of the sale proceedings and challenging the said letter, the suit was filed.

8. Now, the main issue that arises for consideration is as to whether the Civil Court has jurisdiction or not to entertain the suit, when the debt recovery proceedings in respect of the suit properties, initiated by the Bank are pending before the Debt Recovery Tribunal.

9. In this case, admittedly, in respect of the suit properties, Securitization Appeals are pending before the Debt Recovery Tribunal and in other words, the plaint schedule properties are the subject matter of dispute before the Debt Recovery Tribunal. The sale notice discloses that the sale shall be subject to the outcome of the said appeals, pending before the Debt Recovery Tribunal. While so, when the EMD was forfeited, the Respondent should have approached the Debt Recovery Tribunal, but instead of doing so, the Respondent has filed the suit before the court below, which has no jurisdiction to entertain the suit, when the proceedings are pending before the Debt Recovery Tribunal, in view of the specific bar under Section 34 of the SARFAESI Act.

10. Section 34 of the SARFAESI Act reads as under:-

“No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debt Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to

Banks and Financial Institutions Act, 1993 (51 of 1993).”

11.By a reading of Section 34, it is clear that bar of jurisdiction of the civil Court

is in two folds, namely, (1) no civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a DRT or the Appellate Tribunal is empowered by or under the Act and (2) no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any order conferred under the Act.

12.In view of the provisions referred to above and applying the same to the case on hand, this Court is of the view that the court below has miserably failed to appreciate the relevant provisions and erred in granting injunction and the court below ought not to have entertained the suit itself and consequently, the plaint is liable to be struck off, in view of the specific bar contained under the SARFAESI Act.

13.In fine, this Civil Revision Petition is allowed, as prayed for. No costs. Consequently, the connected MP is closed. However, liberty is given to the Respondent to seek their relief before the Debt Recovery Tribunal concerned.

Index:Yes/No  
Web:Yes/No  
Speaking/Non Speaking  
Srcm

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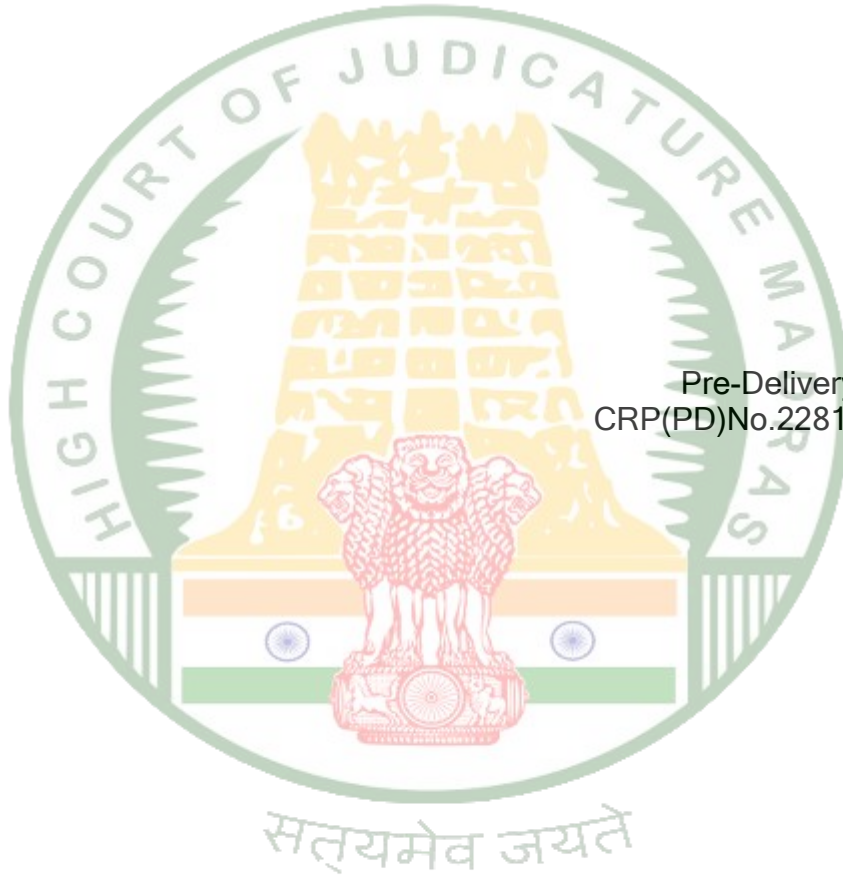
CRP(PD)No.2281 OF 2017

A.A.NAKKIRAN, J.

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To

1. The IV Assistant City Civil Judge, Chennai



Pre-Delivery Order in  
CRP(PD)No.2281 OF 2017

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