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W.P. (MD) No.2847 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**

AND

THE HONOURABLE MRS.JUSTICE **S.ANANTHI**

**W.P. (MD) No.2847 of 2021**

and

**W.M.P. (MD) No.2330 of 2021**

A.Dilshad Begum

: Petitioner

Vs.

1.The Authorized Officer,  
Indian Overseas Bank,  
Kumbakonam Main Branch (0044),  
Kumbakonam,  
Tanjore District.

2.The Chief Manager,  
Indian Overseas Bank,  
Kumbakonam Main Branch (0044),  
Kumbakonam,  
Tanjore District.

3.M/s.AMD Housing Developers,  
Rep. by its Managing Partner,  
H.Ansar Ali

: Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus forbearing the respondents 1 & 2 from proceeding with e-auction sale or any other sale on 18<sup>th</sup> February, 2021 or on any other subsequent date in respect of the petitioner's property measuring to an extent of 531.53 sq.feet of undivided land and bearing flat no.C1, measuring super built up area 1481 sq feet forming part of the Primary Security in Survey No.103/2 in the first floor of AMD Sunshines Apartments in Survey in R.S.No.103/2, New R.S.No.103/21 plot nos.40, 41 and 42, forming part of 7226-1/2 sq feet bounded on the North by plot nos.43, 44 and 45 bounded on the South by 23 feet Road, and East by vaikkal and West by 30 feet road in Ullur Village, Kumbakonam - Mayiladuthurai Road, Kumbakonam, Tanjore District.

For Petitioner : Mr.H.S.Mohammed Rafi

For Respondents : Mr.N.Dilip Kumar  
Standing Counsel  
for R.1 & R.2



**ORDER**

(Order of the Court was made by **M.M.SUNDRESH, J.**)

The petitioner, who is a borrower, has come forward to file this writ petition seeking a Writ of Mandamus forbearing the respondents 1 & 2 from proceeding further to effect the sale.

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2. The learned Counsel appearing for the petitioner submitted that in view of the inclusion of the proceedings initiated against a separate loan obtained on behalf of the firm, the present auction, without following the procedure for another loan, cannot be sustained.

3. However, the learned Standing Counsel appearing for the respondents Bank submitted that it is factually not correct, as both the loans have been clubbed together, with the knowledge of the petitioner. He, incidentally, submitted that in any case, the remedy open to the petitioner is to approach the jurisdictional Tribunal at Chennai.

4. We are not inclined to go into the merits of the case. As rightly submitted by the learned Standing Counsel, the remedy open to the petitioner is to approach the Debts Recovery Tribunal at Chennai. However, since the auction is being scheduled on 18.02.2021, we are inclined to give a breathing time to the petitioner by directing the respondents to defer the confirmation of sale alone, for a period of four weeks from the date of receipt of a copy of this order, enabling the petitioner to approach the jurisdictional Tribunal. We make it clear that the respondents shall proceed with the auction, as scheduled. Since we have not stated anything on merits, we expect the Tribunal to decide the application on merits.

5. In fine, this writ petition stands closed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

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/ /2021

Sub Assistant Registrar(CS)

Gk

+1 CC to M/s.H.MOHAMMED REFI, Advocate (SR-5014[F] dated 15/02/2021)  
+1 CC to M/s.N.DILIP KUMAR, Advocate (SR-5215[F] dated 15/02/2021)

**W.P. (MD) No.2847 of 2021**

**(KMK) CO**

**AP(16/02/2021) 2P 3C**

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