



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

AND

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)Nos.22990 & 23284 of 2021

and

W.M.P(MD)Nos.19483, 19714 & 19715 of 2021

1.W.P(MD)No.22990 of 2021:-

R.Bala Abirami

... Petitioner

Vs.

1.The Authorized Officer,
Canara Bank,
Virudhunagar Branch,
Virudhunagar,
Virudhunagar District.

2.The Branch Manager,
Canara Bank,
Virudhunagar Branch,
Virudhunagar,
Virudhunagar District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the sale notice issued by the first respondent in Ref.VNR/924/SN2/ABIRAMI/2021-2022, dated 26.11.2021 and quash the same and consequently direct the respondents 1 and 2 not to proceed with the sale and physical possession of the property.

For Petitioner

: Mr.A.Joseph Jerry

For Respondents

: Mr.N.Dilip Kumar

2.W.P(MD)No.23284 of 2021:-

Meenakumari

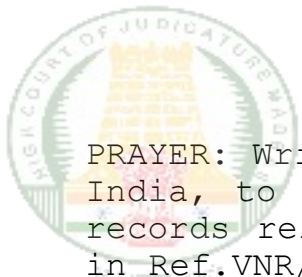
... Petitioner

Vs.

1.The Authorized Officer,
Canara Bank,
Virudhunagar Branch,
Virudhunagar, Virudhunagar District.

2.The Branch Manager,
Canara Bank,
Virudhunagar Branch,
Virudhunagar,
Virudhunagar District.

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For Petitioner : Mr.M.Surli Rajan
For Respondents : Mr.N.Dilip Kumar

COMMON ORDER

(Order of the Court was made by **C.V.KARTHIKEYAN, J.**)

The Writ Petitions have been filed in the nature of Certiorarified Mandamus, calling to quash the sale notice issued by the first respondent/the Authorised Officer, Canara Bank, Virudhunagar Branch, dated 26.11.2021.

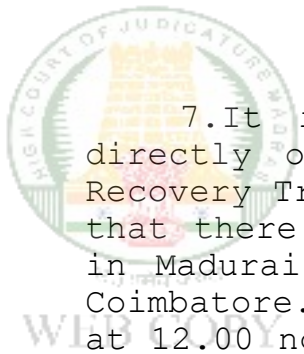
2.By the said notice, the first respondent has brought the property of the petitioner for sale and it is informed by the learned counsel for the petitioner that the sale is actually fixed at 12.00 noon, later in the day, today/29.12.2021. The amount borrowed or rather the amount due as on date is Rs.22,69,369.88/- (Rupees Twenty Two Lakhs, Sixty Nine Thousand, Three Hundred and Sixty Nine and Paise Eighty Eight only).

3.There is also another Writ Petition in W.P(MD)No.23284 of 2021, filed by the Guarantor, who also seeks the same relief.

4.In effect, both the petitioners seek to put a halt of further progress of the sale notice issued by the first respondent.

5.The notice had been issued to the petitioner in W.P(MD) No.23284 of 2021/Guarantor. It is strenuously stated by the learned counsel for the petitioner in W.P(MD)No.22990 of 2021/Principal borrower, that the notice to the petitioner therein had not been issued as contemplated under the provisions of Section 13 of the SARFAESI Act.

6.It is therefore stated that the respondents have proceeded to bring the property for sale without service of notice and since, notice had not been issued, opportunity granted to answer the notice as contemplated under the said provisions could not be complied with by the petitioner and that, has put the petitioner to sufferance. It is claimed that there is a violation of principles of natural justice in this regard.



7.It is also stated that owing to notice not being served directly on the petitioner, further steps to approach the Debts Recovery Tribunal was not possible. Additionally, it is also stated that there is no Presiding Officer at Madurai and any matter filed in Madurai will only be taken up by the Debts Recovery Tribunal, Coimbatore. It is urged that the sale being fixed today/29.12.2021 at 12.00 noon, approaching the Debts Recovery Tribunal or directing the petitioner to approach the Debts Recovery Tribunal, would only force the petitioner to run around from pillar to post which would only be an exercise in futility.

8.We had given careful consideration to the arguments advanced.

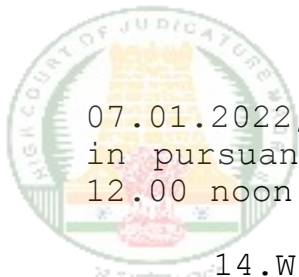
9.Mr.N.Dilip Kumar, learned counsel takes notice on behalf of the respondents and the learned counsel also affirmed the liability of the petitioner which is crystallized as aforesaid at Rs.22,69,369.88/- (Rupees Twenty Two Lakhs, Sixty Nine Thousand, Three Hundred and Sixty Nine and Paise Eighty Eight only).

10.We direct that to maintain equity, the petitioner in W.P(MD) No.22990 of 2021 should deposit a sum of Rs.12,00,000/- directly to the respondents herein on or before 07.01.2022. If at all the sale is to proceed further later today, then the respondents may also keep in mind that there is a direction to the petitioner to deposit a sum of Rs.12,00,000/- and ensure that due consideration for such deposit is granted and intimated to any purchaser about the willingness of the petitioner to deposit such amount of Rs.12,00,000/-.

11.Mr.N.Dilip Kumar, learned counsel appearing for the respondents, drew the attention of this Court to an order of the Division Bench order in *W.P(MD)No.22549 of 2021, dated 21.12.2021, [Shanmugavalli Vs. The Authorised Officer, IDBI Bank Limited]*, wherein the Division Bench has stated that the proper approach in similar circumstances would be to file an application before the Debts Recovery Tribunal.

12.But, in view of the nature of circumstances which has forced the petitioner to come before us, we would direct the petitioner to deposit a sum of Rs.12,00,000/- and also file an undertaking letter to the respondents that they would deposit the sum of Rs.12,00,000/- on or before 07.01.2022. Such undertaking letter must be given to the respondents in the course of the day ie., today/ 29.12.2021 by 2.00 p.m. If it is not so given, the respondents are permitted to proceed further with the sale as issued in the public notice which is called in question in the present Writ Petitions.

13.If the petitioner fails to give a letter as aforesaid by 2.00 p.m., ie., on 29.12.2021, undertaking to pay a sum of Rs.12,00,000/- on or before 07.01.2022, the respondents are free to proceed further with the sale. If the deposit is not made by



07.01.2022, again the respondents are at liberty to proceed further in pursuance of the sale to be conducted today ie., 29.12.2021 at 12.00 noon.

14. With the above directions, these Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Vacation Officer
/Assistant Registrar (CO)

// True Copy //

/ /2022
Sub Assistant Registrar(CS)

lr/ps

To:-

1. The Authorized Officer,
Canara Bank,
Virudhunagar Branch,
Virudhunagar,
Virudhunagar District.
2. The Branch Manager,
Canara Bank,
Virudhunagar Branch,
Virudhunagar,
Virudhunagar District.

COPY TO:

1. THE OFFICER INCHARGE
THE DEBTS RECOVERY TRIBUNAL, MADURAI.
2. THE OFFICER INCHARGE
THE DEBTS RECOVERY TRIBUNAL, COIMBATORE.

+2 CC to M/s.N.DILIPKUMAR, Advocate (SR- 40551 & 40553[F]
dated 31/12/2021)

+1 CC to M/s.A.JOSEPH JERRY, Advocate (SR-40540[F]
dated 30/12/2021)

**W.P(MD)Nos.22990 & 23284 of 2021
29.12.2021**

NSN (CO)
GC(03.01.2022) 4P 8C