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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU
W.P.No.1139 of 2022

Althap Hamed
Proprietor M/s. Media Times
No.7, Pasumarthy Street
Rangarajapuram, Kodambakam
Chennai 600 024.

..Petitioner

Vs.

1. The Authorised Officer
Canara Bank
No.4, Jambulingam Street
Nungambakkam
Chennai 600 034.
2. The Registrar
Debts Recovery Tribunal-1
Shastri Bhavan
Haddows Road
Chennai 600 006.

..Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of Mandamus directing the first respondent to defer the auction of the property either through public auction/private treaty or E-auction through its website CCSL.CO.IN or any other website or portal pursuant to the E-auction notice dated 21.12.2021 bearing Ref.No.Sale Notice/E-auction/Media Times/Althap Hamed in respect of auction to be held on 29.01.2022 or any other subsequent dates in respect of the property described in the above notice for a period of eight weeks pending such time S.A.Diary No.40 of 2022 is taken on file by the second respondent for passing appropriate interim reliefs in the above application.

For the Petitioner : Mr.T.T.Ravichandran



ORDER

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

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The writ petition has been filed challenging the auction of the property pursuant to e-auction notice dated 21.12.2021, scheduled to be held on 29.01.2022.

2. When the matter was taken up on 27.01.2022, learned counsel for the petitioner submitted that the loan availed by the partnership firm could not be repaid for the reasons stated in the writ petition and that the petitioner is willing to pay the entire due amount, which is nearly Rs.80.00 lakh, if reasonable time is given. In view of the request made by learned counsel for the petitioner, this Court directed the petitioner to pay a sum of Rs.40.00 lakh within a week, so that appropriate order would be passed to restrain the auction pursuant to e-auction notice dated 21.12.2021.

3. Learned counsel for the petitioner submitted that the petitioner would be at hardship to make payment of Rs.40.00 lakh within a week and therefore, prayed for two weeks' time to make payment, with liberty to him to seek instructions from the petitioner as to whether the petitioner would be able to pay the amount or not. Accordingly, the matter was adjourned today to find out as to whether the petitioner is willing to pay a sum of Rs.40.00 lakh within a period of two weeks.

4. Learned counsel for the petitioner submits that pursuant to the liberty given by this Court, he informed the petitioner about the payment of Rs.40.00 lakh to be made within a period of two weeks, to which, the petitioner expressed his inability to pay the same and therefore, in the absence of willingness of the petitioner to make payment, the undertaking has not been filed. However, learned counsel for the petitioner has filed a memo to this effect.

5. Learned counsel for the petitioner has taken all the efforts. But, the petitioner has not extended positive response to make payment in order to pass an interim order. Therefore, learned counsel submits that this Court may decide the writ petition on merits.

6. The fact which is not in dispute is the amount borrowed by the petitioner. In view of non-payment of the due amount, the account was declared to be non performing asset and the bank proceeded to recover the amount, by initiating process under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and issuing e-auction



notice on 21.12.2021. Even thereafter, the petitioner has not paid the amount so as to repose confidence about his willingness to pay the due amount nor he accepted the proposal to pay almost half the amount, as directed by this Court, for passing appropriate interim order.

7. In view of the above, we find is that the petitioner is not willing to pay the due amount and therefore, the action taken by the bank under the Act of 2002 cannot be interfered with. Accordingly, the writ petition is dismissed. The memo filed by learned counsel for the petitioner is taken on record. Consequently, WMP No.1204 of 2022 is also dismissed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

kpl/drm

To:

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Chennai 600 034.
2. The Registrar
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NMI (CO)
KKV/02/02/2022