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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No.13426 of 2008

and

W.M.P.No.1 of 2008

T.P.Muthukumaran

... Petitioner

-vs-

1.The Deputy Registrar/Sale Officer,
Salem Urban Co-operative Bank,
Arisipalayam, Salem District.

2.The Special Officer,
Salem Urban Co-operative Bank, Salem.

3.P.Viswanathan

4.P.Kalyanasundaram

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus forbearing the respondents 1 and 2 from bringing the 3rd and 4th respondents properties for public auction which is subject matter of the I.P.No.5/2008 on the file of Sub Court, Salem.

For Petitioner : Mr.C.Prakasam

For R1 & R2 : Mr.A.Selvendran
Special Government Pleader

O R D E R

The prayer sought for herein is for a Writ of Mandamus forbearing the respondents 1 and 2 from bringing the 3rd and 4th respondents properties for public auction which is subject matter of the I.P.No.5/2008 on the file of the Sub Court, Salem.

2. When this writ petition is taken up for hearing, Mr.A.Selvendran, learned Special Government Pleader appearing for the respondents 1 and 2, on instructions would submit that, the debt payable by the 3rd and 4th respondents to the 2nd respondent society on the basis of the auction to bring the properties belongs to the 3rd and 4th respondents by the 1st



respondent have been recovered from the 3rd and 4th respondents, therefore, as on date, the 2nd respondent has no grievance with regard to the money payable by the 3rd and 4th respondents.

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3. However, Mr.C.Prakasam, learned counsel appearing for the petitioner would submit that, when there is a insolvency proceedings pending against the 3rd and 4th respondents under the provisions of the Insolvency Act, all the creditors are to be similarly treated and, when that being so, the 1st and 2nd respondents cannot take any advantage by using their power under the provisions of the Co-operative Societies Act and to recover the amount from the 3rd and 4th respondents.

4. Be that as it may. It is a fact as on today that, the amount payable by the 3rd and 4th respondents to the 2nd respondent have already been paid or recovered from them by the 2nd respondent. Therefore, as on today, the present prayer seeking for restraint restraining the respondents 1 and 2 from bringing the 3rd and 4th respondents properties for public auction is not surviving any more and therefore, virtually, the prayer sought for in this writ petition since has become infructuous.

5. Recording the said development, this Writ Petition is dismissed as infructuous with a liberty to the petitioner to work out his remedy in the manner known to law. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sp/mp
To

1.The Deputy Registrar/Sale Officer,
Salem Urban Co-operative Bank,
Arisipalayam, Salem District.

2.The Special Officer,
Salem Urban Co-operative Bank, Salem.

3.The Sub Judge, Sub Court, Salem.

+1 cc to Government Pleader Sr.NO. 3431

W.P. No. 13426 of 2008

RSI (CO)

A.SK(04/03/2022)