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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2022

CORAM :

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

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.NO.5031 OF 2022

&

W.M.P.NOS.5145 AND 5148 OF 2022

1. M/s.Universal Shoe company
2. V.Arshad Ahmed (Partner)
3. Kaka Arshiya Kauser (partner)
4. Kaka Md. Asrar

... Petitioners

.Vs.

M/s.Canara Bank,
Rep. by its Authorized Officer,
Ambur Branch,
Vellore District.

... Respondent

PRAYER:- Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to Ref. E-Auction Sale Universal/2022/001 dated 16.02.2022 issued by the respondent, quash the same and direct the respondent to regularize the account of the petitioner.

For Petitioners : M/s.Thenmozhi Shiva Perumal

ORDER

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

We have heard the learned counsel for the petitioners.

2. The writ petition has been filed challenging the e-auction notice dated 16.2.2022 issued by the respondent pursuant



to the second possession notice, in view of the fact that the first possession notice was challenged by the petitioners before Debts Recovery Tribunal-I and thereupon an order was passed on 27.12.2019 in the following terms :

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"IA 1391/2019 : Heard both sides. Petition is allowed. Matter is advanced to 27.12.2020. S.A. is taken up. Respondent bank filed a memo stating that settlement is in offing between applicant and respondent, however the possession notice challenged in the SA is blocking the settlement. Applicant reports no objection, for withdrawal of possession notice hence, the memo is allowed. It is hereby ordered that possession notice dated 19.3.2019 stands withdrawn. However, ld. counsel for the applicant prayed for waiver of the possession notice charges. However, ld counsel for the respondent opposed for the same. However, taking into consideration, in the circumstances, 50% of the publication charges only are ordered to be debited to the borrower's account. This order does not preclude the respondent from issuing fresh possession notice and the borrower to contest the same if advised as per law."

3. The first possession notice was withdrawn for the reasons given in the order extracted above. As no final settlement could be arrived at, the respondent bank caused the second possession notice. However, it has not been challenged either before this Court or before the concerned DRT. Without challenging the second possession notice, the writ petition has been filed to challenge the e-auction notice whereas an appeal is maintainable against the second possession notice, which has not been done.

4. The reason assigned for not filing the appeal is stated to be Covid-19 pandemic, without clarifying as to whether the DRT concerned was functional or not in the intervening period. In fact, the DRT concerned was functional during the intervening period so as to challenge the possession notice and now it is time barred. Thus, an indirect way of challenge has been made by filing this writ petition, which is not maintainable in the absence of challenge to the possession notice because e-auction notice is pursuant to the second possession notice. Therefore, the challenge to the e-auction notice cannot be accepted.



5. Accordingly, the writ petition is dismissed.
Consequently, the connected WMPs are also dismissed.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

RS

To

The Authorized Officer,
M/s.Canara Bank,
Ambur Branch,
Vellore District.

+1cc to M/s.Thenmozhi Shiva Perumal, Advocate, S.R.No.16032

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VBM(CO)
PBS/16/03/2022