IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2022

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.20915 of 2022

A.Arul Princy .. Petitioner

v.

Tamilnad Mercantile Bank Ltd.,
represented by Authorized Officer
Hosur Branch
690/1, Old Bangalore Road
1st Floor, Hosur 635 109
Krishnagiri District .. Respondent

Petition under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondent Bank to accept the balance sale consideration of Rs.27,00,000/- within time period as may be fixed by this Hon'ble Court.

For Petitioner :: Mr.K.Balaganesh

For Respondent :: Mr.S.Mohanraj for Mr.P.Tamilavel

ORDER

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

Mrs.A.Arul Princy, W/o Mr.Jayakumar has filed this writ petition under Article 226 of the Constitution of India praying for issuance of a mandamus directing the respondent-Tamilnad Mercantile Bank Limited to accept the balance sale consideration of Rs.27,00,000/- within the period to be fixed by this Court.

2. Learned counsel appearing for the petitioner submitted that when the respondent Bank issued the sale notice in respect of the property in question and conducted the public auction on 23.02.2022, the petitioner took part in the proceedings and she was declared as the successful bidder for a sum of Rs.46,05,000/-. It is also stated that the petitioner also remitted a total sum of Rs.11,52,000/-, which includes 10% of the earnest money deposit of Rs.4,60,000/-, leaving the balance of Rs.34,53,000/- payable by the petitioner on or before 11.03.2022, as per the conditions of sale or within the extended maximum period of 90 days from the date of auction.

Again when the petitioner made a request, the respondent Bank also granted time upto 21.03.2022 to remit the remaining sale proceeds of Rs.34,53,000/. But the petitioner remitted only a sum of Rs.7,53,000/- on 31.03.2022. Finally, when the respondent Bank has extended the time again upto 23.05.2022 to remit the balance amount of Rs.27,00,000/-, the petitioner failed to make the payment within the prescribed time limit. Subsequently, the respondent Bank has issued the letter dated 31.05.2022 forfeiting the 25% bid amount paid by the petitioner, in terms of sub-rule (5) of Rule 9 of the Security Interest (Enforcement) Rules, 2002. Therefore, the learned counsel submitted that although the petitioner was unable to make the balance sale consideration on or before 23.05.2022, she is now prepared to make the entire payment, hence, a direction be issued, he pleaded.

3. A detailed counter affidavit has been filed by the respondent. We have also heard the learned counsel appearing for the respondent.

4. At the outset, it may be mentioned herein that the problem in the

claim made by the petitioner is three-fold.

4.1. Firstly, when the auction sale was held on 23.02.2022, the petitioner took part in the proceedings and she was declared as the successful bidder for a sum of Rs.46,05,000/-. Although the petitioner had remitted 25% of the sale price totalling to Rs.11,52,000/- including the EMD amount of Rs.4,60,000/-, in terms of the auction sale conditions, for the reasons best known, she did not make the balance amount of Rs.34,53,000/- before 11.03.2022. It is also the admitted case of both parties that the petitioner remitted only a sum of Rs.7,53,000/- on 31.03.2022, when she was granted time to make the entire balance amount on or before 21.03.2022.

4.2. Secondly, when the respondent Bank finally extended the time till 23.05.2022 to remit the balance amount of Rs.27,00,000/-, once again the petitioner failed to make the balance amount.

4.3. Thirdly, when the respondent Bank, in terms of sub-rule (5) of Rule 9 of the Security Interest (Enforcement) Rules, 2002 has issued the letter dated 31.05.2022 forfeiting the amount paid by the petitioner, it is not known why the petitioner has not questioned the letter dated 31.05.2022 forfeiting the amount deposited by the petitioner.

4.4. Fourthly, the petitioner has not impleaded the borrower. The reason is that if the borrower keeps the amount ready for payment in lieu of the petitioner, she has got the right to redeem the property. But without impleading the borrower, she has filed the writ petition.

4.5. Finally, the petitioner ought to have approached the jurisdictional Debts Recovery Tribunal to ventilate her grievance, which she has not done.

For all the aforementioned reasons, the writ petition fails and it is dismissed. However, there is no order as to costs.

Speaking/Non speaking order (T.R.,A.C.J.) (D.B.C.,J.)
Index : yes/no 10.11.2022
ss

To

1. The Authorized Officer
Tamilnad Mercantile Bank Ltd.,
Hosur Branch
690/1, Old Bangalore Road
1st Floor, Hosur 635 109
Krishnagiri District

THE HON'BLE ACTING CHIEF JUSTICE

AND

D.BHARATHA CHAKRAVARTHY,J.

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