



W.P(MD)No.2116 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2022

CORAM :

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

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1. P.Mohaideen Abdul Kathar
2. P.Uvais Meeran

... Petitioners

VS.

1. The Chief Manager,
Bank of Baroda,
Avanashi Road Branch,
Door No.774,
Sri Kumaran Hospital Compound,
P.N. Road,
Thirupur-641602.

2. The Authorised Officer,
Bank of Baroda,
Avanashi Road Branch,
Door No.774,
Sri Kumaran Hospital Compound,
P.N. Road,
Thirupur-641602.

3. The Senior Manager,
Bank of Baroda,
Avanashi Road Branch,

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Door No.774,
Sri Kumaran Hospital Compound,
P.N. Road,
Thirupur-641602.

4. Umamaheswari

5. G.Saravanakumar

6. Sangeetha

7. Revathi

... Respondents

(R4 to R7 are impleaded vide Court order dated 11.08.2021 in WMP(MD)No.7776/2021)

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the respondents to return back a sum of Rs.1,22,59,640/- (Rupees One Crore Twenty Two Lakhs Fifty Nine Thousand Six Hundred and Forty only) along with interest at the rate of 24% per annum with effect from 29.08.2018 till the date of payment and also to pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) as compensation for the mental agony suffered by the petitioners for the past two years within a time limit that may be stipulated by this Court.

For Petitioner	: Mr.J.Barathan
For R1 to R3	: Mr.Pala Ramasamy
For R4 to R7	: No appearance



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ORDER

(Order of the Court was made by D.KRISHNAKUMAR, J.)

The petitioners are the auction purchasers and the respondent Bank has issued E-Auction Sale Notice dated 11.04.2018 for selling the secured property. The petitioners participated in the auction which was held on 18.05.2018 and they were declared as successful bidders. Thereafter, the sale was confirmed on 19.07.2018 and the petitioners paid the entire sale consideration amount and the respondent bank has issued a sale certificate in favour of the petitioners on 31.08.2018 which was also registered as Document No. 1166 of 2018 before the Joint Sub Registrar No.IV, Madurai South. It is the grievance of the petitioners that despite registration of the sale certificate, the respondent Bank has not come forward to hand over the possession of the secured property to them. Thereafter, in the first week of December 2020, the petitioners came to know about the suit in O.S.No.150 of 2015 on the file of the Principal District Court, Madurai, filed by one G.Sangeetha/6th respondent herein against



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G.Gurusamy and others, claiming 1/4th share in the subject property; for a decree of declaration declaring that the possession proceedings taken by the 4th defendant/authorised officer under the SARFAESI Act and also through Recovery of the Debts due to Banks and Financial Institutions Act is null and void.

2. According to the petitioners, the entire auction conducted by the respondent Bank is tainted by fraud and suppression of material facts about the pendency of the aforesaid suit. The 6th respondent has also filed S.A.No.197 of 2018 before the Debts Recovery Tribunal, Coimbatore, challenging E-Auction Sale Notice. The said fact was also not disclosed in the E-Auction Sale Notice dated 12.04.2018 issued by the respondent Bank. A preliminary decree was passed in the aforesaid suit in favour of the 6th respondent. In view of the decree passed in the said suit as well as pendency of the appeal before the Debts Recovery Tribunal, Coimbatore, the respondent Bank has not come forward to hand over the possession of the secured property to the petitioners. The petitioners are now facing financial



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loss and hardship for taking possession of the secured property.

Therefore, they have filed this writ petition seeking refund of the entire sale amount paid by them to the respondent Bank with interest.

3. Per contra, learned counsel appearing for the respondent Bank relying upon the counter filed by the respondent Bank submitted that M/s.Anbu Textiles Private Ltd., has availed Rs.9 Crores from the respondent Bank and has offered 3 properties as securities including the property of Mr.Gurusamy and it was jointly mortgaged by Mr.Gurusamy along with his son Mr.Saravanakumar. The said borrower has not adhered to the repayment schedule and therefore the account was classified as NPA and the Bank issued a demand notice dated 26.03.2014 under Section 13(2) of the SARFAESI Act and thereafter issued possession notice dated 30.08.2014. Challenging the possession notice, M/s.Anbu Textiles Private Ltd., Mr.Gurusamy and others filed S.A.No.394/2014 before the Debts Recovery Tribunal, Madurai, which was dismissed. The respondent Bank also filed O.A.No.363/2014 on the file of the Debts Recovery Tribunal,



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Coimbatore, against M/s.Anbu Textiles Private Ltd., Mr.Gurusamy and others and it is pending adjudication.

3.1. While so, a frivolous suit for partition in O.S.No.150 of 2015 on the file of the Principal District Court, Madurai, has been filed by the daughter of Mr.Gurusamy, 6th respondent herein, claiming 1/4th share in the said property. A detailed written statement was filed by the Bank stating that the subject matter of the property bequeathed by Mrs.Angalaeeswari Ammal to her son Gurusamy is nothing more and nothing less than an absolute bequeath to her son and addition of words to his legal heirs is only a surplus-age and does not create any right to her daughter entitling for partition. Originally, the Civil Court had granted an interim order and subsequently the said interim order was not extended by the Civil Court and therefore, the Bank brought the property for auction vide auction notice dated 12.04.2018. The mortgagor G.Gurusamy died leaving behind his legal heirs namely, Ms.Umamaheswari, Ms.Sangeetha, Mr.Saravanakumar and Ms.Revathy. Ms.Umamaheswari and Ms.Sangeetha challenged the



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WEB COPY said sale notice dated 12.04.2018 in S.A.No.197/2018 on the file of the Debts Recovery Tribunal, Madurai, on the ground that they are entitled to share in the property as co-owners. They have also filed I.A.No.1213/2018 for stay of the E-Auction scheduled on 18.05.2018.

3.2. On the date of auction, the Debts Recovery Tribunal, Madurai, had granted a conditional interim order. In the meantime, auction was conducted and the petitioners were declared as successful bidders and as per the order of the Debts Recovery Tribunal, Madurai, the sale was not confirmed till 19.07.2018. However, since the conditional order was not complied, the Bank confirmed the sale and issued a sale certificate on 31.08.2018. The review petition filed by Ms.Umamaheshwari in R.A.No.1441/2018 in I.A.No.1313/2018 was also dismissed on 21.07.2018. Aggrieved by the judgment and decree passed in O.S.No.150 of 2015, the Bank filed appeal in A.S.No.103 of 2021 before this Court and this Court by order dated 29.04.2021, had granted an order of interim stay.



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3.3. At this juncture, the petitioners have filed this writ petition. According to the learned counsel for the Bank the aforesaid disputed facts cannot be adjudicated under Article 226 of the Constitution. The respondent Bank has already informed the petitioners about the pendency of the legal proceedings and despite knowledge of the same, the petitioners have filed this writ petition and therefore, it is not maintainable. If the petitioners are aggrieved, they ought to have approached the appropriate forum. Therefore, the learned counsel seeks for dismissal of the writ petition.

4. Heard the learned counsel for the parties and perused the materials available on record.

5. The primordial contention of the petitioners is that they were not aware of the aforesaid legal proceedings and that the respondent Bank had not disclosed the same in the sale notice. If the said legal proceedings were brought to the notice of the petitioners,



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they would not have participated in the auction sale. In view of the pendency of the aforesaid legal proceedings, the respondent Bank has not come forward to hand over possession of the secured property to the petitioners. The petitioners being *bonafide* purchasers, are entitled to refund of the sale amount with interest.

6. The petitioners have participated in the auction sale held on 18.05.2018. It is an admitted fact that on the date of auction, the legal heirs of Gurusamy namely, Ms.Umamaheswari and Ms.Sangeetha have approached the Debts Recovery Tribunal in S.A.No.197 of 2018 and obtained interim stay on condition to pay the outstanding amount to the respondent Bank in two instalments. Since the said conditional order was not complied with on or before 18.07.2018 by the respondents 4 and 6/Ms.Umamaheswari and Ms.Sangeetha, the respondent Bank confirmed the sale on 19.07.2018 and thereafter the petitioners have paid the entire sale consideration amount and a sale certificate was issued by the respondent Bank on 31.08.2018 and the same was registered as Document No.1166 of 2018 before the Joint



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Sub Registrar No.IV, Madurai South. According to the petitioners, they were not aware of the aforesaid proceedings challenging the sale certificate and there is no specific averment in the counter as to the date of knowledge of the aforesaid proceedings.

7. Perusal of the order dated 08.01.2019 passed in W.P.No. 34772 of 2018 filed by Umamaheswari and Sangeetha challenging the sale certificate shows that the writ petitioners herein were arrayed as respondents 3 and 4 in that writ petition and at the admission stage itself, the said writ petition was dismissed with an observation that the remedy available to the petitioners is only before the Debts Recovery Tribunal and not by way of a writ petition under Article 226 of the Constitution.

8. According to the petitioners, without challenging the sale certificate, the present writ petition is maintainable. We are afraid to accept the said contention. The respondent Bank has already issued the sale certificate and the same has been registered. The said fact is

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not disputed by the parties. That being so, the petitioner has not challenged the said sale certificate but seeks the prayer for refund of the sale amount with interest. We are of the view that the said relief cannot be granted.

9. Learned counsel for the respondent Bank has relied upon a decision of the Hon'ble Supreme Court reported in **(2018) 1 SCC 626, Agarwal Tracom Pvt Ltd., vs. Punjab National Bank and others**, wherein, similar case filed by the auction purchaser came up before the Apex Court and it was held that the auction purchaser is one such person who is aggrieved by the action of the secured creditor in forfeiting their money. The auction purchaser, is therefore, falls within the expression "any person" as specified under Section 17(1) of the SARFAESI Act and hence is entitled to challenge the action of the secured creditor before the DRT by filing an application under Section 17(1) of the SARFAESI Act.



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10. Coming back to the present case on hand, by virtue of the sale certificate issued by the respondent, the title of the secured property vested with the petitioners. The dispute is that the respondent Bank has not handed over possession to the petitioners. The grounds raised by the parties are disputed facts which can be tested only before the appropriate forum and this Court sitting under Article 226 of the Constitution cannot go into such disputed questions of facts. We have already expressed that the prayer in this writ petition for refund of the sale amount with interest cannot be entertained without challenging the sale certificate. Further, though the petitioners contended that the respondent Bank suppressed the pendency of the legal proceedings relating to the secured property, in the counter affidavit, the respondent Bank has specifically contended that the petitioners had knowledge of the pending legal proceedings. However, we cannot go into such disputed facts under Article 226 of the Constitution. There is no merit in the writ petition and the same is liable to be dismissed.



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11. Accordingly, the Writ Petition is dismissed leaving it open to the petitioners to work out their remedy before the appropriate forum, if so advised. We make it clear that if the petitioners approach the Civil Court or the Debts Recovery Tribunal, the period of pendency of this writ petition shall be excluded for the purpose of limitation as per Section 14 of the Limitation Act. No costs.

[D.K.K.,J.] & [R.V.,J.]
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D.KRISHNAKUMAR, J.
and
R.VIJAYAKUMAR, J.

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ORDER MADE IN
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DATED : 21.12.2022