BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.07.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
and
THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.P(MD)No.9533 of 2022
and W.M.P.(MD) Nos.6821 and 6822 of 2022

D.Periyasamy ... Petitioner

Vs.

1.The Branch Manager,
State Bank of India,
Thuraiyur Branch,
Thuraiyur,
Trichy District.

2.The Authorised Officer,
State Bank of India,
Thuraiyur Branch,
Thuraiyur,
Trichy District.

3.The Recovery Officer,
Debts Recovery Tribunal – 3,
6th Floor, Additional Office Building,
Shastri Bhavan, Haddows Road,
Nungambakkam,
Chennai – 600 006.

4.K.Navaneethan ... Respondents
(R4 is impleaded vide Court order
dated 27.06.22 in W.M.P.(MD) No.
8879/2022 in W.P.(MD) No.9533/
2022 by SSSRJ & SSYJ)

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the order dated 29.03.2022 passed in I.A.No.9 of 2022 in TRC No.88/2018 (Old DRC No.308/18) on the file of the 3rd Respondent and quash the same as illegal, incompetent and ultravires and for consequential orders.

For Petitioner	:	Mr.G.Prabhu Rajadurai for M/s.D.Selvanayagam
For Respondents 1 & 2	:	Mr.T.Govindasamy Standing Counsel
For 4th Respondent	:	Mr.M.Joseph Thatheus Jerome

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ORDER

(Order of the Court was made by **S.S.SUNDAR, J.**)

This Writ Petition has been filed challenging the order dated 29.03.2022, passed in I.A.No.9 of 2022 in TRC No.88/2018 (Old DRC No.308/18) on the file of the 3rd Respondent and quash the same as illegal, incompetent and ultravires and for consequential orders.

2. Heard learned counsel Mr.G.Prabhu Rajadurai for Mr.D.Selvanayagam, learned counsel for the petitioner,

Mr.T.Govindasamy, learned Standing Counsel for the respondents 1 and 2 and Mr.M. Joseph Thatheus Jerome, learned counsel for the fourth respondent.

3. Brief facts, which are necessary for disposal of the writ petition, are as follows:-

The petitioner borrowed loan from the respondent bank and had mortgaged an extent of 4 Acres 37 Cents of Agricultural Land with 7.5 HP Motor Electricity Connection in Sobanapuram Village, Thuraiyur Taluk and Trichy District. Though it is stated by the petitioner that he borrowed only Rs.10,50,000/- in 2009, the Standing Counsel for respondent bank states that the petitioner has availed another loan also by mortgaging the same property. Be that as it may, the Recovery Officer has passed an order of attachment of the immovable property on 06.09.2021 and auction notice was issued on 29.01.2022, fixing the date of sale on 17.03.2022. Meanwhile, the bank has issued a notice containing the offer for One Time Settlement on 14.08.2021. However, the Bank has proceeded with the sale of property ignoring One Time Settlement offer of the bank, according to learned counsel appearing for the petitioner. It is not in dispute that the sale had taken place and the fourth respondent has purchased the same for a sum of Rs.64 lakhs. It is the case of the auction purchaser that he has made payment of around Rs.71 lakhs to complete the sale by getting the sale certificate. It is further stated that the sale deed was executed by the Bank and it is duly registered. The petitioner filed an application before the Debts Recovery Tribunal in T.R.C.No. 88 of 2018 to foreclose the account by paying the entire amount due and I.A.No.9 of 2022 is also filed by the petitioner to stay further proceedings pursuant to E-auction sale notice dated 29.01.2022. However, the Recovery Officer dismissed the said application for stay mainly on the ground that the outstanding as on 25.01.2022 is Rs.48,14,531.67 + interest and costs and the property itself had been sold in favour of a third party purchaser, who quoted higher bid of Rs.64 lakhs. Challenging the order of the Recovery Officer in the application filed before the Debts Recovery Tribunal under Section 27 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the above writ petition is filed.

4. Learned Standing Counsel appearing for the respondents 1 and 2 and learned counsel for the fourth respondent submitted that after confirmation of the sale, sale certificate was

issued to the purchaser and the sale deed itself is registered as on date. It is in these circumstances, the proceedings initiated by the petitioner, which is not challenging the sale, but to foreclose the loan by making payment to the bank is not maintainable. Since the application is in the nature of redemption of mortgage, the Court can entertain the same, if the petitioner discharge the entire loan, redeeming the property before the sale is concluded. The petitioner had crossed that stage as the auction has taken place and the third party purchaser has purchased the property.

5. However, learned counsel for the petitioner states that there are several irregularities in the sale proceedings and the petitioner should be given liberty to pursue further in this regard. Though learned counsel appearing for the Bank and the purchaser have serious objections for giving one more opportunity to the petitioner, this Court is of the view that the right that flow from the statutory provisions cannot be curtailed by this Court on the basis of facts and materials supplied by one of the parties. In the above circumstances, this Court though is of the view that the writ petition is liable to be dismissed for want of merits is inclined to grant liberty to the petitioner to pursue his right of challenging the

sale on any valid ground as may be permissible under law.

6. The Writ Petition is therefore, dismissed giving liberty to the petitioner to pursue his remedy to challenge the sale and the sale notice etc. No costs. Consequently, connected Miscellaneous Petitions are closed.

7. Learned counsel appearing for the petitioner pointed out that this Court has originally granted interim stay on condition that the petitioner should pay Rs.10,34,632/-, within a stipulated time. The quantum mentioned was on the basis of One Time Settlement offered by the bank.

8. Learned Standing Counsel appearing for the Bank submits that the liability is more than Rs.40 lakhs as there is another loan account and the same property is offered as security to the said loan also.

9. Considering the overall circumstances, this Court without going into the merits and without expressing anything on the merits of the petitioner's contentions, gives liberty to the

petitioner to challenge the sale proceedings and the Recovery Officer / Debts Recovery Tribunal shall consider the payment made by the petitioner pursuant to the interim stay granted by this Court as one towards compliance of any precondition to entertain the application to set aside the sale.

[S.S.S.R., J.] **[S.S.Y., J.]**
11.07.2022

Index : Yes / No

sj

1.The Recovery Officer,
Debts Recovery Tribunal – 3,
6th Floor, Additional Office Building,
Shastri Bhavan, Haddows Road,
Nungambakkam,
Chennai – 600 006.

S.S.SUNDAR, J.

and

S.SRIMATHY, J.

sj

W.P(MD)No.9533 of 2022

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