BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.05.2022

CORAM :

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
AND
THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)No.10168 of 2022
and
W.M.P.(MD)Nos.7214 & 7215 of 2022

M.Mohamed Izathin ...Petitioner

Vs.

1. The Authorized Officer/
Assistant General Manager,
Tamilnadu Marcantile Bank Ltd.,
Regional Office, No.30, Besant Road,
Chinna Chokkikulam, Madurai - 625 002.

2. The Tamilnadu Mercantile bank Ltd.,
Chinnalapatti Branch,
represented by its Branch Manager,
No.2-6, 1 H3, First Floor,
Pooncholai, Dindigul. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned auction notice issued by the second respondent in Daily News Paper dated 25.04.2022 by fixing the auction on 27.05.2022 and quash the same as illegal.

For Petitioner : Mr.T.Lenin Kumar

For Respondents : Mr.N.Dilip Kumar

O R D E R

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

This Writ Petition has been filed challenging the impugned auction notice issued by the second respondent in Daily News Paper dated 25.04.2022 by fixing the date of auction on 27.05.2022.

2. The brief facts of the case are that the petitioner was the absolute owner of the immovable properties, namely, a house site measuring 460.00 Sq.ft. at Natham Survey No.21/3, Bazar Street, E.C.Road, Chanthirampattinam Village, Aduvayarkovil Panchayat Union, Mimisal Panchayat, Avudaiyarkovil Taluk, Pudukottai District along with a building bearing Door No.825 constructed in an extent of 400 Sq.ft. and a building site measuring 3,525 Sq.ft. in Pudukottai District along with a building constructed thereon bearing Door No.747 constructed in an area of 1,430 Sq.ft.

3. The contention of the petitioner is that his father, namely, Mohamed Salih is the Proprietor of the Dindigul Vasantham Stores. On 30.06.2020, he availed the credit facilities from the second respondent. Due to lockdown announced by the Government on account of pandemic situation, the petitioner's father incurred huge monetary loss and he could not repay the loan. Due to non-payment, the loan accounts availed by the petitioner's father was declared as Non-Performing Asset on 31.03.2021. The respondents issued a demand notice under Section 13(2) and another notice dated 03.04.2021. On 26.07.2021, the second respondent has issued another demand notice under Section 13(2) calling upon the petitioner's father to pay a sum of Rs.29,14,463.31/- as on 30.06.2021 within 60 days. The respondents have issued a possession notice on 11.10.2021 and directed the petitioner to pay a sum of Rs.30,08,382.31/-.

4. In the meanwhile, the respondents have issued auction notice dated 28.01.2022, for recovery of Rs.33,74,058.53/- as default amount on 30.11.2021. The petitioner has challenged the same in W.P. (MD) No. 1187 of 2022. The petitioner has agreed to pay the first installment of one third portion of the amount on the date of sale i.e., on 28.01.2022 before 10.30 a.m., the second installment of one third portion of the amount was agreed to be paid on or before 31.03.2022 and the balance amount to be paid on or before 30.06.2022. The above said amount of Rs.33,74,058.53/- is recoverable as on 20.11.2021. The petitioner has paid the first installment on 28.01.2022. However due to Covid-19 pandemic, the petitioner could not mobilize money. Thereafter, the petitioner had paid a sum of Rs.2,00,000/- on 04.04.2022. Thereafter, the petitioner had paid a sum of Rs.9,00,000/-, the balance portion of the second installment on 25.04.2022. But the second respondent Bank issued the auction notice dated 25.04.2022 by fixing the auction date as 27.05.2022 for recovery of Rs.23,63,375/-. The petitioner is seeking to extend the time for paying the third installment until 30.08.2022. The contention of the petitioner is that the respondents have not taken the into

account the belated payment of 11,00,000/-. Now only the third installment of Rs.11,25,000/- is pending and the petitioner is seeking extension of time until 30.08.2022

5. The contention of the petitioner is that if the second respondent Bank grant sufficient time by rehabilitating and re-scheduling the loan, the petitioner would be in a position to settle the outstanding amount. The mortgaged properties are worth about more than Rupees One Crore and the outstanding amount is only a sum of Rs.11,25,000/- after deducting the two installments. Therefore, the petitioner claims extension of time for paying his third installment as full and final settlement. Earlier this Court has granted time until end of May 2022. The petitioner had paid the two installments and in order to pay the third installment, the petitioner is seeking extension of time.

6. The petitioner has established his bonafides by paying the first installment. Thereafter, the petitioner has taken earnest effort to pay the second installment and he has paid a sum of Rs.2,00,000/- on 04.04.202. Thereafter, the petitioner has paid a sum of Rs.9,00,000/- on 29.04.2022, thereby, he had paid the second installment of Rs.11,00,000/-. As per the order of this Court, the petitioner ought to pay the balance amount in the month of June. Since the petitioner is facing severe financial problem, the petitioner has come with this writ petition seeking extension of time to pay the balance amount.

7. The learned Counsel for the respondent submitted that the petitioner was already granted time to pay the entire amount in third installment. The petitioner had paid the first and second installments, but has not paid in time as agreed. However subsequently, after a lapse of time, the petitioner had paid the amount towards the second installment. The petitioner shall not be granted further extension. Moreover, the claim of the petitioner is to grant three months to pay the third installment and the learned Counsel for the respondents submitted that further extension will prejudice their rights to bring the properties for sale.

8. Having heard the rival submissions, this Court is the considered opinion that the petitioner has paid the first installment as agreed and has paid the second installment with a delay and beyond the stipulated time. This alone cannot be a reason to reject the claim of extension of time for paying the balance amount. Therefore, this Court is of the considered opinion that the petitioner is entitled to extension of time to pay the balance amount. Therefore, this Court is granting

extension of time and the petitioner is directed to pay the balance amount on or before 30.08.2022. If the petitioner is not paying the balance amount as stipulated above, after the lapse of extended time, the respondents are at liberty to proceed further in accordance to law.

9. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Vacation Officer.

// True Copy //

/ /2022
Sub Assistant Registrar(CS)

jbr

To

1. The Authorized Officer/
Assistant General Manager,
Tamilnadu Marcantile Bank Ltd.,
Regional Office, No.30, Besant Road,
Chinna Chokkikulam, Madurai - 625 002.

2. The Tamilnadu Mercantile bank Ltd.,
Chinnalapatti Branch,
represented by its Branch Manager,
No.2-6, 1 H3, First Floor,
Pooncholai, Dindigul.

+1 CC to M/s.T. LENIN KUMAR, Advocate
(SR-23870[F] dated 20/05/2022)

+1 CC to M/s.N. DILIPKUMAR, Advocate
(SR-23971[F] dated 20/05/2022)

ORDER MADE IN
W.P(MD)No.10168 of 2022
and
W.M.P.(MD)Nos.7214 &
7215 of 2022
19.05.2022

SP/31/05/2022/4P/5C