



W.P(MD)No.11743 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2022

CORAM :

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

W.P(MD)No.11743 of 2021
and
WMP(MD)Nos.9230 and 9232 of 2021

Charles D.Jayaseelan

... Petitioner

vs.

1. Indian Bank,
Represented by its Authorised Officer,
197, Dindigul Main Road,
Ponnagar, Tiruchirappalli-620 015.

2. A.Ramesh Kumar

3. M/s. Nivi Impex,
Represented by its Proprietor A.Ramesh Kumar
31, Royale Enclave,
Kallankuthu, Ariyamangalam, Tiruchirappalli-620 010.

4.S.Santha

... Respondents

PRAYER : Writ Petition filed under Article 226 of the
Constitution of India, for issuance of a Writ of Certiorarified



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Mandamus, calling for the impugned sale notice dated 05.02.2021 on the file of the 1st respondent and quash the same as illegal, ultravires, void abinitio, unenforceable and inexecutable and by way of Mandamus directing the 1st respondent to set aside the registered certificate of sale bearing document No.3553/2021 dated 26.04.2021 registered before the Woraiyur Sub Registrar office executed by the 1st respondent in favour of the 4th respondent in respect of the property comprised in S.F.Nos.19/2C & 19/3A, Ward 53, Plot No.25 (East Part), 5th Cross (West) Shanmuga Nagar South Extension admeasuring to an extent of 1200 sq.ft and actual constructed build up areas are ground floor 927.94 sq.ft and 1st floor portion including corridor 1140.51 sq.ft.

For Petitioner : Mr.Shangar Murali
For R1 : Mr.R.Pandivel

ORDER

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

Challenging the sale notice dated 05.02.2021 issued by the 1st respondent, the petitioner has filed this writ petition seeking a consequential direction to the 1st respondent to set aside the registered certificate of sale bearing document No.3553/2021 dated 26.04.2021 registered before the Woraiyur Sub Registrar office

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executed by the 1st respondent in favour of the 4th respondent in respect of the property comprised in S.F.Nos.19/2C & 19/3A, Ward 53, Plot No.25 (East Part), 5th Cross (West) Shanmuga Nagar South Extension.

2. Learned counsel for the petitioner submitted that the petitioner is the guarantor in respect of the loan borrowed by the 2nd respondent who is the Proprietor of the 3rd respondent concern. The petitioner executed equitable mortgage by deposit of title deed and agreement of guarantee in respect of his immovable property in favour of the 1st respondent bank. The 2nd respondent committed default, but instead of taking action against the principal borrowers/respondents 2 and 3, the 1st respondent Bank has issued notice under Section 13(2) of the SARFAESI Act, 2002, calling upon the petitioner to pay the outstanding amount payable by the respondents 2 and 3. Thereafter, the 1st respondent Bank issued possession notice against the petitioner on 19.05.2018 under Section 13(12) of the SARFAESI Act and on receipt of the same, the petitioner



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approached the 3rd respondent to discharge the said loan amount, but he never cared to heed the petitioner's request. Learned counsel for the petitioner further submitted that the value of the petitioner's property is worth about Rs.75 Lakhs and therefore, the petitioner requested the 1st respondent Bank to defer the auction proceedings stating that he will pay the loan amount availed by the respondents 2 and 3 within a period of six months, but the 1st respondent without considering his request, conducted e-auction sale on 24.02.2021. Learned counsel further submitted that without following the procedure, during the pandemic situation, the 1st respondent sold the petitioner's property for a meagre value. Further, no valuation report was obtained regarding the market value of the property and that the 1st respondent Bank has virtually failed to follow Section 13(6) of the SARFAESI Act and allowed the 4th respondent/auction purchaser to take possession of his property without even filing a petition under Section 14 of the SARFAESI ACT. Therefore, the petitioner has filed this writ petition.



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3. Per contra, learned standing counsel appearing for the 1st respondent Bank submitted that pursuant to the impugned sale notice, the 4th respondent/auction purchaser purchased the petitioner's property on 24.02.2021 and thereafter the 1st respondent Bank has issued the sale certificate to her on 26.04.2021. However, the petitioner has filed this writ petition on 09.07.2021 after the delay of more than five months without approaching the Debts Recovery Tribunal in time and therefore, the writ petition is liable to be dismissed.

4. We have heard the learned counsel appearing for the parties and perused the materials available on record.

5. As rightly contended by the learned counsel for the 1st respondent, there is a delay of more than 5 months in filing the present writ petition from the date of issuance of the sale certificate and that the petitioner has also not approached the Debts Recovery Tribunal within the time prescribed under the Act. Now the third party



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right has been created over the petitioner's property and therefore, we are not inclined to consider the prayer sought for by the petitioner.

6. Hence, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

[D.K.K.,J.] & [R.V.,J.]
12.12.2022

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D.KRISHNAKUMAR, J.
and
R.VIJAYAKUMAR, J.

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ORDER MADE IN
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DATED : 12.12.2022