



WEB COPY



W.P.No.2380 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2023

CORAM

THE HONOURABLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.2380 of 2023

T.Chelladurai

.. Petitioner

Versus

1.The Authorised Officer,
Karur Vysya Bank,
Tiruppur Main Branch,
Tiruppur.

2.S.Subramaniam

3.M.Sheik

.. Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India seeking for issuance of a writ of mandamus directing the first respondent to conduct re-auction in respect of the property situated in Survey No.442/9A & 9B (earlier Survey No.442/1A2 & 1D), Ilanji Special Grade Panchyat and Ilanji Village, Tenkasi District, to an extent of 15 cents and the building of 3297.9 sq.ft. and pass such further orders.

For Petitioner

: Mr.D.Srinivasaragavan

ORDER

(Delivered by The Hon'ble Acting Chief Justice)

The petitioner, claiming to be the lender of the second respondent, has filed this writ petition seeking for issuance of a writ of mandamus directing the Authorised Officer, Karur Vysya Bank, Tiruppur Main Branch, Triuppur/first respondent to conduct re-auction in respect of the property situated in Survey No.442/9A & 9B (earlier Survey No.442/1A2 &



1D), Ilanji Special Grade Panchyat and Ilanji Village, Tenkasi District, having an extent of 15 cents and the building of 3297.9 sq.ft.

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2. Learned counsel for the petitioner would submit that the second respondent borrowed a loan to the tune of Rs.9,00,000/- from the petitioner. But, since he did not repay the said sum, he filed a suit in O.S.No.350 of 2020, whereby learned Principal Sub Judge, Tenkasi, granted an order of Attachment Before Judgment. Now, in an effort to make the order of Attachment Before Judgment infructuous, the first respondent bank, in collusion with the borrower, has brought the property in question for public auction. Such an action of the first respondent bank is running contrary to the order of Attachment Before Judgment granted by the Principal Sub-Court, Tenkasi. Therefore, a direction may be given to the first respondent bank to re-auction the property in question.

3. We are unable to agree with the above said submissions. The petitioner claims to be one of the lenders of the second respondent/borrower. It is seen from the E-auction sale notice dated 30.07.2022 that the second respondent borrowed a loan from the first respondent bank and as on 30.06.2022, the second respondent is liable to pay a sum of Rs.34,21,102.76/-. Since the second respondent failed to make the payment, the first respondent bank initiated SARFAESI proceedings by bringing the property of the borrower/second respondent in public auction. The Bank being the secured creditor, has precedence over the petitioner. The further contention that the property was sold for lesser value and that he is ready to purchase the property is also without any substance, as he could



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have taken part in the public auction, but, without doing so, in our considered view, he cannot maintain the present writ petition. On this count, the writ petition is liable to be dismissed and accordingly, it is dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

(T.R., ACJ.) (D.B.C., J.)
31.01.2023

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Index: yes/no
Neutral citation: yes/no

To

The Authorised Officer,
Karur Vysya Bank,
Tiruppur Main Branch,
Tiruppur.



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THE HON'BLE ACTING CHIEF JUSTICE
and
D.BHARATHA CHAKRAVARTHY, J.
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