



W.P.No.6562 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVU

W.P.No.6562 of 2023

A.Kuppusamy

.. Petitioner

Vs

1.The General Manager,
Former Vijaya Bank and now
Bank of Baroda,
Door No.41/2, M.G. Road,
Bangalore-560 001.

2.The Chief Manager,
Former Vijaya Bank and now
Bank of Baroda,
Door No.114-A, Jawaharlal Nehru Street,
Puducherry-605 001.

3.The Branch Manager,
Former Vijaya Bank and now
Bank of Baroda,
Door No.114-A, Jawaharlal Nehru Street,
Puducherry-605 001.

.. Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the third respondent to repay the deposit amount a sum of Rs.9,17,500/- along with interest at the rate of 24% based on the petitioner's representation dated 01.12.2022.

For the Petitioner : Ms.S.Sridevi
for M/s.M.Selvam

For the Respondents : Mr.Ilayaraj Kumar
for M/s.Ramalingam Associates
for respondents 2 and 3

No appearance
for respondent No.1

ORDER

(Order of the court was made by the Hon'ble Chief Justice)

We have heard learned counsel for the petitioner and learned counsel for respondents 2 and 3.

2. The petitioner was a successful bidder in an e-auction. He has deposited 25% of the amount i.e. Rs.9,17,500/- on or about 06.08.2010. However, it appears that thereafter the third party, who has purchased the mortgaged property from the borrower, has



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filed Securitisation Application. The said Securitisation Application was allowed by the Debts Recovery Tribunal. The bank had filed an appeal before the Debt Recovery Appellate Tribunal. The said appeal came to be allowed on 21.1.2015.

3. It is submitted by learned counsel for the petitioner as well as learned counsel for the respondent bank that there was a cloud over the mortgage in the Original Application bearing O.A.No.908 of 2014. In view of that, the bank could not proceed with the sale of the property. The said OA was allowed on 15.02.2020 and then only the property became clear from all clouds.

4. Learned counsel for the petitioner submits that the respondent bank may either take the remaining amount and sell the property to the petitioner or in the alternate refund the amount with interest at the rate of 24% per annum. Whereas, according to learned counsel for the bank, now the sale of the property at the same rate of 2010 would not be feasible. The bank is ready to refund the amount with interest of the savings bank account.



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5. It is not the case that the present petitioner, who was the auction purchaser, had denied to perform his part of the promise. It is the bank which is not in a position to issue the sale certificate because of the pendency of the litigations. The petitioner cannot be said to be at fault. The respondent bank has used and enjoyed the amount of Rs.9,17,500/- from 06.08.2010 till date. Naturally, the petitioner would be entitled for reasonable interest over the said amount having been deprived of the use and enjoyment of the said amount. The bank is ready to pay interest at the rate of 4% per annum, viz., savings bank account rate. The said rate would be too meagre rate of interest to be paid to the petitioner. More particularly, when the petitioner is not at fault for non-execution of the sale certificate. It was never the case of the respondent bank that the petitioner was not ready and willing to perform his part of the promise.

6. In the light of that, we direct the respondent bank to return the amount of Rs.9,17,500/- with interest at the rate of 7% per annum from 01.09.2010 till the date of payment. The payment



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shall be made to the petitioner within a period of eight weeks.

7. With the above observations, the writ petition is disposed of. There will be no order as to costs.

(S.V.G., C.J.)

(P.D.A., J.)

03.08.2023

Index : Yes/No
Neutral Citation : Yes/No
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