A.No.4412 of 2023 in

O.P.No.562 of 2022

R.N.MANJULA,J.

This application has been filed seeking permission to the petitioner to sell the property *viz*., Item No.3 of Schedule 'A' bearing Old Door No.23, New Door No.72, Chinna Thambi Street, Chennai 600 001.

2. The applicant is the petitioner. The main Original Petition has been filed under Section 8(2) of the Hindu Minority and Guardianship Act, 1956 seeking permission to sell the share of the minor's property in the properties described under Schedule 'A' and 'B' of the petition.

3. The petitioner examined herself as P.W.1. Exhibits A1 to A8 have been marked.

4. After appreciation of the evidence on record, this Court has already passed the following order in the Original Petition on 16.11.2022 by granting permission to deal with the item Nos.1 and 2 of the ' A' Schedule properties *viz*., the house and land at Old Door No.15, New Door No.44, Anderson Street, George Town, Chennai 600 001 and the house and land at Door No.19/1, (Part of old No.16) Big Street alias Veeraragha Mudali Street, Triplicane, Chennai 600 005 in the first instance. The relevant portion of the order is extracted below:

> *"2. It is the contention of the learned counsel for the petitioner Ms.AL.Ganthimathi, that the husband of the petitioner herein, Muthiah Annamalai, was running several businesses in the name and style of M/s.Muthu Agencies and M/s.Annamalai Chettiyar and Company and also other businesses. Towards running of the businesses, to increase capital, the properties described in 'A' Schedule had been mortgaged with the Bank namely, the ICICI Bank.*
>
> *3. The husband of the petitioner Muthiah Annamalai died on 31.08.2021. The Bank loans will have to be settled and the debts to other unsecured creditors also have to be settled.*
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> *4. The petitioner had stated in the petition that she wanted to sell the properties in 'A' Schedule which have already been mortgaged with the ICICI Bank and also the 'B' Schedule properties over which, her husband of the petitioner has a share.*
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> *5. The petitioner has three children. The first two daughters have attained the age of majority but the 3rd son namely, M.Annamalai is a minor. He was born on 06.06.2007.*
>
> *6. It is represented by the learned counsel that the sale of the properties are absolutely necessary to ensure that*

the properties are not brought to sale by the bank and it is hoped that if the properties are sold, then, the debts would not remain on the shoulders of the children particularly, the minor son.

7. It is also stated that the creditor Bank had issued notices stating that they would initiate proceedings for recovery of debts due under the provisions of the SARFAESI Act. Therefore, left with no other alternative, the present petition has been filed."

5. However, liberty is granted to the petitioner to file an application to extend the permission to include any other property as described in the schedule also for sale, if the sale proceeds of selling the first and second items of the 'A' Schedule property is not sufficient to clear the loan dues. Now, this application has been filed seeking permission to sell item No.3 of Schedule 'A', bearing Old Door No.23, New Door No.72, Chinna Thambi Street, Chennai-600 001.

6. Ex.P12 would show that the total amount due to be paid towards the loan availed from the bank is to the tune of Rs.11,91,26,135.84. However, it is submitted by the learned Senior Counsel Mrs.AL.Gandhimathi that after having negotiations with the bank, the bank had offered One Time Settlement (OTS) to the tune of Rs.1,50,00,000/- in respect of the outstanding dues in the account of M/s.Muthu Agencies and to the tune of Rs.7,50,00,000/- for settling the outstanding dues to the account of M/s.AS Annamalai Chettiar and Co and totally for Rs.9,00,00,000/-. It is further submitted that the property at Anderson Street was sold only for a sum of Rs.2,15,00,000/- and other property at the Big Street was sold for a total consideration of Rs.1,47,50,000/-. The total sale consideration obtained from selling the above two properties was Rs.3,62,50,000/-.

7. The One Time Settlement offer given by the bank has been produced before the Court to prove the contention of the petitioner. Since the sale proceeds of the properties for which permission has already been granted was not sufficient to meet out the One Time Settlement offer for Rs.9,00,00,000/-, the petitioner has filed this application seeking permission to sell away item No.3 of ' A' Schedule property bearing Old Door.No.23, New Door.No.72, Chinna thambi Street, Chennai also.

8. It is further submitted by the learned Senior Counsel for the petitioner that if the One Time Settlement offer is not availed and the payments were not done shortly, the offer will be withdrawn. The liabilities of the petitioner's business if unsettled, that would no doubt affect the minor's interest also.

9. The sale agreement between the petitioner and proposed buyer has also been produced to show that the petitioner had entered into a sale agreement with a third party in respect of item No.3 of the 'A' Schedule property. From the Sale agreement it is seen that the sale consideration was agreed for Rs.2,92,00,000/-. Since One Time Settlement offer was for Rs.9,00,00,000/-, even if permission is granted to sell item No.3 of Schedule A, that will not be sufficient to meet out the offer. However, Mrs.AL.Gandhimathi, learned Senior counsel for the petitioner submitted that some outside financial arrangement has also been made to honour the One Time Settlement offer given by the bank.

10. It is also submitted that SARFAESI proceedings are already initiated. If the proceedings continue, that would badly affect the asset status of the petitioner's family and especially the future of the minor. If the properties are brought for public auction in the said proceedings, the buyers will undervalue the properties and the sale proceeds may not be sufficient enough to satisfy the outstanding loan amount. So it is always better for the petitioner to make use of the One Time Settlement offer given by the bank. Hence, I feel permission needs to be granted to sell away item No.3 of 'A' schedule.

11. In the earlier order dated 16.11.2022, there is a direction that after selling item Nos.1 and 2 of the ' A' schedule property, a disclosure should be made about the sale proceeds as to whether the bank debt in the first place and other unsecured creditors thereafter have been settled with the sale proceeds. In compliance thereof, various demand drafts showing payments made to ICICI Bank subsequent to the earlier sale have been produced. The demand drafts would show that the petitioner has utilised the sale proceeds for the purpose of partial settlement of the outstanding loan amount.

12. Further, consequent to the suggestion given in the order dated 16.11.2022, the petitioner had negotiation with the banker and got the offer for One Time Settlement. In such circumstances, granting permission to sell item No.3 of the 'A' schedule property, in pursuant to the agreement dated 19.04.2023 to the prosperous buyer for a sale consideration of Rs.2,92,00,000/-

would also be helpful for raising funds to meet out the One Time Settlement offer.

13. In view of the above stated reasons, this application is allowed and permission is granted to the petitioner to sell item No.3 of A schedule property situated at Old Door No.23, New Door No.72, Chinna Thambi Street, Chennai 600 001. After selling the property, the petitioner is directed to make a disclosure to the Court regarding the sale proceeds received and its payment towards One Time Settlement offer.

26.09.2023

Internet:Yes
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