IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

W.P.No.28102 of 2022
and
W.M.P.No.27384 of 2022

D.Balasubramanian ... Petitioner

Vs.

1.The General Manager,
Canara Bank,
Chennai Circle Office,
563, P B 1078, 1, Anna Salai,
Teynampet, Chennai – 600 018.

2.The Authorized Officer,
Canara Bank,
Saidapet I (DP:0933),
375, Mound Road,
Saidapet,
Chennai – 600 015. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to proceedings in impugned order dated 29.09.2022 to forfeited the deposit of 25% of bid amount Rs.1,78,27,500/- issued by the second respondent bank and quash the same, subsequently, direct the respondents to return the 25% bid amount Rs.1,78,27,500/- to the petitioner.

For Petitioner	:	Mr.V.J.Arul Raj for M/s.N.Vijayaraj
For Respondents	:	Mr.P.Raghunathan for T.S.Gopalan & Co

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ORDER

This Writ Petition has been filed seeking for a Writ of Certiorarified Mandamus, to call for the records relating to proceedings in impugned order dated 29.09.2022 to forfeited the deposit of 25% of bid amount Rs.1,78,27,500/- issued by the second respondent bank and quash the same, subsequently, direct the respondents to return the 25% bid amount Rs.1,78,27,500/- to the petitioner.

2. The case of the petitioner is that, he is residing as No.9A, Kundrakudi Nagar Main Road, Adampakkam, Chennai – 600 088. He is the successful bidder and nobody participated in the 7th time E-auction sale conducted by the second respondent-Bank on 28.06.2022 against Loan A/c.0933256010311 of the borrower, who is none other than the

landlord of the petitioner. The property is situated in the limit of Greater Chennai City Corporation at Plot No.46, Shaw wallance colony 3rd Street, Brindavan Nagar main road, Adampakkam, measuring an extent of 8439 sq.ft. and building measuring 1740 sq.ft. and the petitioner was running a vegetable shop under the name and style of 'Saravana Stores' for the past 15 years, which was subsequently auctioned in favour of the petitioner, which is the subject matter of the writ petition. The Bank Manager of the respondent-Bank came to the petitioner's shop and advised him to purchase the property, which is mortgaged at the respondent-Bank to be under process of 7th time E-auction sale, since nobody participated in the auction sale. However, the petitioner initially refused to participate in the said auction on the ground that there was so many encroachments in the said property and the petitioner have no capacity to purchase the property. Even then, the Bank Manager of the respondent-Bank forced the petitioner to purchase the property and finally, the petitioner opened a bank account with the second respondent on 25.05.2022 and participated in the auction and the petitioner bid the highest amount of Rs.7,13,10,000/-.

2.1. Thereafter, the peititoner under the pressure of the Manager of the respondent-Bank pledged his wife's jewels to the tune Rs.2 crores and paid 10% of the bid amount and subsequently, paid 15% of the bid amount. Totally, the petitioner had paid 25% of the bid amount of Rs.1,78,27,500/-. Subsequently, the respondent-Bank confirmed the sale in favour of the petitioner. However, immediately thereafter, the petitioner received a whatsapp message from the borrower, namely landlord of the petitioner, stating that, as if they moved a Sarfaesi Proceedings and obtained interim order as against the sales. Believing the same, the petitioner had not paid 75% of the balance bid amount. Thereafter, on 29.09.2022, the respondent-Bank passed the impugned order forfeiting 25% of the bid amount paid by the petitioner, since the petitioner failed to remit the balance 75% of the bid amount within the stipulated period. Challenging the same, the petitioner has filed the above writ petition.

3. The learned counsel for the petitioner submits that, subsequent to the forfeiture, the respondent-Bank conducted fresh auction and auctioned the property to the tune of Rs.6,42,00,000/- as against

Rs.7,13,10,000/- and forfeits the amount as if the petitioner not prepared to pay the balance amount within the stipulated time. Since the landlord of the petitioner threatened him, the balance amount was not paid by the petitioner. Further, the landlord of the said property borrowed a sum of Rs.4 crores, however, the respondent-bank sold the property by auction for more than Rs.4 crores, which is to the tune of Rs.6,42,00,000/-. He also submits that 25% of the bid amount was paid by the petitioner under the pressure mounted by the second respondent-Bank Manager by pledging his wife's jewels in the second respondent-Bank to the tune of Rs.2 crores. Hence, the refusal made by the respondent-Bank to return the 25% of the bid amount paid by the petitioner, is not sustainable. Accordingly, he prays for appropriate orders.

4. The learned counsel appearing for the respondents placing reliance on the counter affidavit, submitted that, the respondent-Bank forfeited 25% of the bid amount paid by the petitioner because the petitioner did not comply with the terms and conditions on the sale effected in his favour for Rs.7,13,00,000/- and did not pay the balance sale consideration of 75% being Rs.5,35,10,000/- within 15 days of the

date of confirmation of sale. He also submits that the forfeiture is made under the provisions of Rules 9(3) and 9(5) of the Secutiry Interest (Enforcement) Rules, 2002 and the same is prefectly valid and appropriate. Further, he submits that one more auction was conducted and fixed the price at Rs.6,42,00,000/- on 15.11.2022 from the earlier reserve price of Rs.7,13,00,000/- since there was no bidder in the earlier auction sale excepting the petitioner. One Jagadish made a bid of Rs.6.43 crores and the sale was completed by payment of the entire sale consideration of Rs.6,43,00,000/- on 01.12.2022, for which, sale certificate was also issued to him on 01.12.2022.

5. Further, he submits that the respondent-Bank has incurred a sum of Rs.90,000/- towards advertising the sale, conducting the sale and continuing the proceedings in respect of the same. The price at which the petitioner bided at the auction was Rs.7,13,10,000/- and the price at which one Jagadish declared to be the successful bidder is Rs.6,43,00,000/-. In view of the subsequent sale effected to the said Jagadish, the respondent-Bank has lost a sum of Rs.70,10,000/- by way of the purchase price. Hence, he submits that the action of the

respondent-Bank is fully in accordance with the provisions of the Securitisation Act and there is nothing illegal, arbitrary or unjust about the forfeiture of the amount deposited by the petitioner. Accordingly, he prays for dismissal of the above Writ Petition.

6. Heard the learned counsel of the petitioner as well as the learned counsel appearing for the respondents and perused the materials available on record.

7. Admittedly, the petitioner participated in the e-auction conducted by the respondent-Bank and bid the highest amount of Rs.7,13,10,000/- and by pledging his wife's jewels with the second respondent-Bank to the tune of Rs.2 crores, he paid 25% of bid amount within the stipulated time. However, he has not paid the balance bid amount since he was threatened by the landlord as if they move DRT proceedings and obtained interim order as against the auction. It is also equally undisputed fact that the borrower-landlord of the petitioner moved Securitazation Application in S.A.No.31 of 2023 before the Debts Recovery Tribunal-III, Chennai challenging the order of the learned

Chief Metropolitan Magistrate, Kanchipuram for taking physical possession of the property. However, no interim order was granted in his favour and there was a nexus in between the communication sent by the landlord to the petitioner as well as the subsequent application moved by the landlord. Further, the landlord-borrower borrowed loan of Rs.4 crores, however, the property was auctioned for more than Rs.4 crores, which is nearly Rs.6 crores, from which, it is seen that the respondent-Bank has not sustained any loss. Therefore, this Court is of the view that the respondent-Bank cannot earn money from the earlier auction since they have not suffered any loss and the loss is only about Rs.1 lakh for advertisement. Hence, the loss sustained by the respondent-Bank can be compensated by imposing costs to the petitioner.

8. In view of the above observations, this Court directs the respondent-Bank to refund the entire bid amount to the petitioner, which has been paid by him, without any interest, after deducting a sum of Rs.1 lakh as costs, within a period of four (4) weeks from the date of receipt of a copy of this order.

9. With the above directions and observations, the Writ Petition is disposed of. No Costs. Consequently, the connected miscellaneous petition is closed.

07.06.2023

Index : Yes / No
Speaking order / Non-speaking order
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M.DHANDAPANI, J.

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W.P.No.28102 of 2022

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