



W.P.(MD) No.2377 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD) No.2377 of 2023

and

W.M.P.(MD)Nos.2161 & 2162 of 2023

Sivan Periyasamy

... Petitioner

Vs.

The Authorized Officer,
Indian Overseas Bank,
Neithalur (2084) Branch,
Neithalur South,
Kulithalai Taluk,
Karur District – 639 110.

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned e-auction sale



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notice dated 11.01.2023 issued by the respondent for sale of immovable properties at Karur District, Kulithalai Taluk, Kulithalai SRO, Vaiganallur South Village, Ayan Punja SF No.640/3 - Ac.0.86 cents within the boundaries scheduled on 06.02.2023 between 11 A.M. to 1.00 P.M. at Erode and quash the same as unconstitutional.

For Petitioner : Mr.A.Santhanam Rajesh

For Respondent : Mr.N.Dilipkumar,
Standing Counsel

ORDER

[Order of the Court was made by D.KRISHNAKUMAR, J.]

Challenging the e-auction sale notice dated 11.01.2023, issued by the respondent, the petitioner has filed this Writ Petition.

2. By consent, this Writ Petition is taken up for final disposal.



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3. The learned counsel appearing for the petitioner submitted that the petitioner has availed the mortgaged loan from the respondent bank and due to COVID-19 pandemic, he was not in a position to repay the said amount. Hence, the respondent bank has classified the loan account as NPA. He further submitted that the petitioner is not a chronic defaulter and he has taken all effective steps to repay the loan amount. He further submitted that without opportunity to settle the dues under the OTS scheme, the respondent bank has issued the demand notice and thereafter, without issuing the possession notice, has issued the e-auction sale notice on 11.01.2023 and therefore, the same is liable to be set aside.

4. The learned counsel appearing for the respondent – Bank submitted that the petitioner's wife, who is the borrower, has filed a Writ Petition in W.P. (MD)No.22702 of 2022 before this Court, challenging the earlier e-auction sale notice dated 02.09.2022 and this Court has passed the conditional order. Without complying the said conditional order, now the petitioner, who is the



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guarantor, has filed the present Writ Petition and therefore, this Writ Petition is liable to be dismissed.

5. We have heard the learned counsel appearing on either side and perused the materials available on record.

6. On a perusal of the records, it is seen that the petitioner's wife, who is the borrower of the loan amount has filed a Writ Petition W.P.(MD)No.22702 of 2022 and this Court has passed a conditional order. The said conditional order has not been complied with. At this stage, the petitioner, who is the guarantor has filed the present writ petition with an intention to protract the action taken by the respondent bank to recover the said amount. Further, the petitioner has not shown any bona fide for making settlement to the respondent bank. Therefore, we are not inclined to entertain this Writ Petition.



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7. Accordingly, the Writ Petition is dismissed with liberty to the petitioner to approach the Debts Recovery Tribunal, for appropriate remedy. No costs. Consequently, connected miscellaneous petitions are closed.

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

06.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
vsm

To

The Authorized Officer,
Indian Overseas Bank,
Neithalur (2084) Branch,
Neithalur South,
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D.KRISHNAKUMAR, J.
and
R.VIJAYAKUMAR, J.

vsm

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