



WEB COPY

W.P.(MD)No.4571 of 2023



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.03.2023

CORAM:

**THE HON'BLE MR.T.RAJA, THE ACTING CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR**

**W.P.(MD)No.4571 of 2023
and
W.M.P.(MD)Nos.4277 to 4279 of 2023**

Purushotham D Patel

... Petitioner

-VS-

1.The Authorized Officer,
The Union Bank of India,
Stressed Asset Management Branch,
Nos.38 & 39, Whites Road, Royapettah,
Chennai - 600 014.

2.The Branch Manager,
The Union Bank of India,
Tenkasi Branch,
No.87, Mattappa Street,
Tenkasi - 627 811.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned sale held on 23.02.2023 in connection with E-Auction Sale Notice on 01.02.2023, issued by the first respondent and set aside the same as illegal.

For Petitioner

: Mr.S.C.Herold Singh
for Mr.M.Dinesh Hari Sudarsan



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W.P.(MD)No.4571 of 2021



For Respondents

: Mr.V.S.Karthi
Standing Counsel

ORDER

**[Order of the Court was made by
The Hon'ble The ACTING CHIEF JUSTICE]**

Mr.Purushotam D Patel, S/o.Devji M Patel, has approached the respondent Bank at Tenkasi Branch and on 29.09.2016 availed a loan of Rs.139,50,00,000/- [Rupees One Hundred and Thirty Nine Crores and Fifty Lakhs] by mortgaging properties as securities. They were regularly repaying the loan to the respondent Bank upto the year 2017. But, due to poor business performance coupled with Covid-19 Pandemic situation, they were unable to repay the loan amount. Therefore, the loan accounts were classified as NPA on 16.06.2017. Pursuant to the same, the respondent Bank issued a demand notice dated 15.07.2017 under Section 13(2) of the SARFAESI Act to the petitioner firm, calling upon them to repay the total outstanding of Rs.26,36,85,113/- [Rupees Twenty Six Crores Thirty Six Lakhs Eight Five Thousand One Hundred and Thirteen only]. A detailed reply was sent by the petitioner and the same was also received by the respondent Bank. But, ignoring the same, possession notice dated 02.11.2017 under Section 13(4) of the SARFAESI Act was



issued by the respondent Bank to the petitioner stating that the schedule mentioned properties were taken possession and thereafter, the impugned sale notice dated 01.02.2023 was issued to the petitioner/borrower stating that E-Auction was scheduled to be held on 23.02.2023. Challenging the said impugned sale notice, dated 23.02.2023, the petitioner has filed the present Writ Petition.

2. Mr.S.C.Herold Singh, learned counsel appearing for the petitioner would submit that the petitioner is not a borrower, whereas he is only a guarantor. He would further submit that the petitioner is prepared to pay 25% of the outstanding amount as on date within a period of 15 days and he would pay the balance outstanding amount if reasonable time is granted. Therefore, he would submit that a direction may be issued that on payment of 25% of the outstanding amount, the sale should not be confirmed.

3. In reply, Mr.V.S.Karthi, learned Standing Counsel appearing for the respondent Bank would submit that the petitioner in collusion with the borrower has involved in the scam. He would further submit that the auction sale notice dated 01.02.2023, has become infructuous, since the property mentioned



therein has already been sold away in the public auction and the sale deed is going to be registered on 06.03.2023 and now, third party interest has been created. Therefore, at this juncture, entertaining the present Writ Petition behind the back of the auction purchaser is untenable.

4. We find merits on the aforesaid submission made by the learned Standing Counsel appearing for the respondent Bank.

5. Considering the aforesaid facts and circumstances, in our considered view, when the property was sold away on 23.02.2023 and third party interest has been created, without impleading the auction purchaser, we cannot entertain the Writ Petition. Therefore, the Writ Petition is dismissed. No costs. Liberty is given to the petitioner to work out his remedy before the Debts Recovery Tribunal, if he is so advised. Consequently, connected Miscellaneous Petitions are closed.

[T.R., A.C.J.] [D.K.K., J.]
03.03.2023

NCC : Yes / No
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T.RAJA, A.C.J.
and
D.KRISHNAKUMAR, J.

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ORDER MADE IN
W.P.(MD)No.4571 of 2023
DATED : 03.03.2023