



W.P.(MD) No.6299 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.6299 of 2021

and

W.M.P.(MD)No.4910 of 2021

1.N.Venkatesan

2.N.Kalimuthan

... Petitioners

-Vs-

1.The Authorized Officer,

The Repatriates Co-operative Finance

& Development Bank Limited,

Sri Pethaperumal Kaderi Ammal Complex,

1st Floor, No.45, Shanmuga Raja Road,

Karaikudi-630 002.

2.The Branch Manager,

The Repatriates Co-operative Finance

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WEB COPY & Development Bank Limited,
Sri Pethaperumal Kaderi Ammal Complex,
1st Floor, No.45, Shanmuga Raja Road,
Karaikudi-630 002.

3.The General Manager,
The Repatriates Co-operative Finance
& Development Bank Limited,
Repco Towers, No.33, North Usman Road,
T.Nagar, Chennai-600 017.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Reference No.SRF.1096, 1097, 1098/2019/LAD, dated 01.11.2019 quash the same as illegal, null and void and also to pass a direction, directing the 3rd respondent to pay the petitioner the sum of Rs.20,04,400/- (Rupees Twenty Lakhs Four Thousand Four Hundred Only) together with interest at 12% per annum from 28.10.2019 till realization.

For Petitioners : Mr.K.S.Karthick Raja

For Respondents : Mr.Pala Ramasamy



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ORDER

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

Challenging the order of the 1st respondent, dated 01.11.2019, this Writ Petition is filed with a consequential direction to the 3rd respondent to pay a sum of Rs.20,04,400/- (Rupees Twenty Lakhs Four Thousand and Four Hundred Only) to the petitioner together with interest at 12% per annum from 28.10.2019 till realization.

2. According to the petitioners, the 1st petitioner paid a sum of Rs.20,04,400/- towards initial amount to the 1st respondent and participated in the auction conducted by the respondent Bank. Since there were no bidders, the 1st petitioner was declared as successful bidder and directed to pay 15% of the bid amount. The 1st petitioner requested the 1st respondent as to when they will hand over the physical possession of the property, for which, the 1st respondent has not given any reply. Therefore, the 1st petitioner gave a letter dated 29.10.2019, seeking refund of the aforesaid amount. However, the 1st respondent by letter dated 01.11.2019, rejected the request of the petitioner, which was impugned in this Writ Petition.

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3.The learned counsel for the petitioners submitted that the respondent Bank is not a secured creditor within the meaning of Section 1(zd) of SARFAESI Act. Therefore, the respondent Bank have no power to initiate any proceedings under SARFAESI Act. He also relied upon the judgment of this Court in ***S.P.Ganesan Vs. Authorized Officer, REPCO Bank, REPCO Tower, Chennai-600 017*** reported in ***2021 (5) CTC 817***. The relevant portion of the same is extracted hereunder:-

“14.The Respondent is not a Secured Creditor within the meaning of Section 1(zd) of the Act of 2002. The definition has five limbs, the first of them being a Bank or Financial institution; the second and fourth being Debenture Trustees; the third being an Asset Reconstruction Company and the fifth being any other Trustee holding securities on behalf of a Bank or Financial institution. The Respondent cannot be covered by the last four limbs and does not proclaim to be answering to any of such descriptions. However, the Respondent claims to be covered by sub-clause (I) of Clause (zd) of the definition Section:

“(zd) “Secured Creditor” means-

(I) Any Bank or Financial Institution or any consortium or group of Banks or Financial Institutions holding any right, title, or interest upon any tangible asset or intangible asset as specified in Clause(1).””



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4.Heard the learned counsel on either side and perused the materials available on record carefully.

5.In the light of the aforesaid submission, we are of the view that the petitioners are entitled for refund of the aforesaid amount paid by the petitioners as EMD along with interest at 6% per annum, since the respondent Bank does not fall under the definition of Section 1(zd) of SARFAESI Act. Therefore, this Writ Petition is disposed of, directing the respondent Bank to refund a sum of Rs.20,04,400/- along with interest at 6% per annum to the petitioners within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K., J.] & [R.V., J.]
07.02.2023

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

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