



W.P.(MD) No.7005 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.7005 of 2022

and

W.M.P.(MD)Nos.5335, 5336 of 2022 and 1694 of 2023

K.Vallikumari

... Petitioner

-Vs-

1.The Authorized Officer,

IDBI Bank Ltd.,

Anna Salai Branch, Door No.115, Anna Salai,

Saidapet, Chennai-15.

2.IDBI Bank Ltd.,

Rep. by its Branch Manager,

Anna Salai Branch, Door No.115, Anna Salai,

Saidapet, Chennai-15.

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3.The Auro Mira Bio System Kanyakumari Private Ltd.,

Rep. by its Director,

Door No.5, 3rd Floor, Jasmaens Complex,

M.C.Nicholos Road, Chetpet, Chennai-31.

4.Debts Recovery Tribunal-Madurai,

III & IV Floor, Kalyani Towers,

4/162, Madurai-Melur Road,

(Near Meenakshi Mission Hospital),

Uthangudi Post, Madurai-625 107.

5.P.Balakrishnan

... Respondents

(R5 is impleaded vide Court order dated 10.01.2023 in W.M.P.(MD)No.324 of 2023 in W.P.(MD)No.7005 of 2022)

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned E-Auction Sale Notice dated 11.03.2022 issued by the 1st respondent and the subsequent E-Auction Sale conducted on 30.03.2022 and quash the same.

For Petitioner : Mr.V.Veerapandian,

For M/s. Vastlaw Associates

For R1 & R2 : Ms.Vinitha Srinivasan,

for M/s.NVS & Associates

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For R4 : No Appearance
For R5 : Mr.T.Lajapathi Roy, Senior Counsel
For M/s.R.Rajeshkumar

ORDER

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

This Writ Petition has been filed challenging the sale auction notice dated 11.03.2022 issued by the 1st respondent and the subsequent sale conducted on 30.03.2022.

2.After making elaborate submissions, the learned counsel appearing for the petitioner submitted that the auction was held on 30.03.2022, wherein the 5th respondent was the successful bidder and he also paid entire sale consideration amount to the respondent Bank. On payment of the entire amount, the respondent Bank issued a sale certificate to the 5th respondent on 10.05.2022, though this Court, by an interim order dated 05.05.2022, stayed the impugned sale notice. Therefore, the respondent Bank has violated the order of this Court dated 05.05.2022. He further submitted that the 3rd respondent created some

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forged documents as if he is the owner of the property and borrowed money by mortgaging the petitioner's property from the respondent Bank, for which, the petitioner filed a suit in O.S.No.23 of 2019 on the file of the learned District Munsif, Boothapandy, seeking declaration to declare the mortgage created by the 3rd respondent as null and void and the same is still pending. Thereafter, the petitioner has cancelled the said forged sale deed before the Sub-Registrar, Kottaram, Kanyakumari, vide Document No.3405 of 2013, dated 29.10.2013. Therefore, the impugned sale notice is liable to be set aside.

3.The learned counsel for the respondent Bank contended that the aforesaid cancellation of the sale deed was challenged before this Court in W.P.(MD)No.4476 of 2014 by the 3rd respondent, wherein, this Court, by an order dated 12.09.2022, directed the Sub-Registrar, Kottaram, Kanyakumari, to delete the encumbrance relating to the Document No.3405 of 2013, cancelling the sale deed dated 29.10.2013. According to the respondent Bank, the said order has become final. Therefore, the petitioner has no *locus standi* to challenge the auction conducted by the respondent Bank.



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4.The learned Senior Counsel appearing for the 5th respondent stated that the 5th respondent was the successful bidder in the auction conducted by the respondent Bank on 30.03.2022 and the sale certificate was also issued in favour of him. Since the cancellation of the sale deed was cancelled by this Court in the Writ Petition cited supra, he seeks dismissal of this Writ Petition by reiterating the stand taken by the respondent Bank.

5.At this juncture, the learned counsel for the petitioner stated that the petitioner also filed an appeal before the 4th respondent in S.A.SR.No.2736 of 2022 and the same is also pending for disposal. Therefore, he seeks liberty to raise the grounds before the 4th respondent. It is also brought to the notice of this Court that pursuant to the directions of this Court dated 14.11.2022, the petitioner has deposited a sum of Rs.5.41 Crores to the respondent Bank and the Bank is ready to return the aforesaid amount to the petitioner without prejudice to the rights of the parties concerned.



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6.Considering the aforesaid submissions made on either side, we are inclined to direct the respondent Bank to refund the aforesaid amount to the petitioner within a period of four weeks from the date of receipt of a copy of this order. The petitioner is also at liberty to agitate her contentions before the Civil Court as well as before the 4th respondent. It is needless to mention that if the petitioner approaches the respondent Bank, seeking for a copy of the notice issued under Section 13(2) of SARFAESI Act, the respondent Bank shall consider the same and issue a copy of the said notice to the petitioner.

7.With the above direction, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

[D.K.K., J.] & [L.V.G., J.]

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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