BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P(MD)No.8590 of 2022
and
WMP(MD)No.6328 of 2022

Mrs.Jayanthi ... Petitioner

vs.

1. The Manager,
Tamil Nadu Mercantile Bank,
Chengavilai Branch,
2/168-C, Choozhal,
Kollem Code-624 9160.
Kanyakumari District.

2. Mrs.Johnsy Bai

3. Mr.Rajan G.C. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 07.01.2022 passed by the 1st respondent and quash the same and consequently direct the 1st respondent to credit the same and consequently direct the 1st respondent to credit the balance amount of auction amount namely Rs.28,05,927.87 to the account of the petitioner in Account No.109700150950032 within the time limit fixed by this Court.

For Petitioner	:	Mr.Ezhilarasu for Mr.M.Punitha Deva Kumar
For R1	:	Mr.N.Dilip Kumar, Standing Counsel
For R2 & R3	:	Mr.S.C.Herold Singh

ORDER

(Order of the Court was made by D.KRISHNAKUMAR, J.)

The prayer in this writ petition is for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 07.01.2022 passed by the 1st respondent and quash the same and consequently direct the 1st respondent to credit the balance amount of auction amount namely, Rs.28,05,927.87 to the account of the petitioner in Account No.109700150950032 within the time limit to be fixed by this Court.

2. Learned counsel for the petitioner submitted that for the two loans availed by the petitioner as well as the private respondents, the petitioner's husband stood as guarantor. Though the petitioner's husband's property was sold in the public action and out of the sale proceeds, her loan account was closed, without crediting the balance sale proceeds to her bank account, the impugned order crediting the remaining sale proceeds in the loan account of the private respondents, without issuing notice to the petitioner, vitiates the entire proceedings and it reflects collusion between the respondent Bank and the private respondents. Therefore, the impugned order is liable to be set aside.

3. The 1st respondent/Bank has filed a counter affidavit. Learned standing counsel appearing for the 1st respondent submitted that the petitioner's husband has given his property in Re.Sy.No. 383.15A1 at Kulappuram Village, Methukkumal as common collateral security for the two loans availed by the petitioner and the private

respondents. The borrowers committed default. Therefore, the respondent Bank issued demand notices and possession notices to the borrowers as well as the guarantor calling upon them to discharge the liabilities to the respondent Bank. Finally, sale notice was issued on 14.09.2021 by fixing the auction sale on 27.10.2021 regarding the mortgaged properties stood in the names of the petitioner's husband and private respondents.

4. He further submitted that out of the two mortgaged properties, the property of the petitioner's husband was sold through public auction on 06.12.2021 for Rs.48.70 Lakhs. Out of the sale proceeds, the respondent Bank closed the loan account of the petitioner. Since the petitioner's husband also stood as guarantor for the loan availed by the private respondents and offered the aforesaid property as common collateral security, the remaining sale proceeds were credited in the loan account of the private respondents. In order to recover the remaining loan dues of the private respondents, the respondent Bank again re-fixed the auction sale for selling the

mortgaged property of the private respondents, against which, the private respondents filed S.A.No.148/2022 and obtained a conditional stay and therefore, the petitioner cannot contend that the respondent Bank had colluded with the private respondents.

5. According to the learned counsel for the private respondents, the 3rd respondent had given a cheque to the petitioner for settling their loan amount to the respondent Bank.

6. Be that as it may, we cannot go into such disputed questions of facts. The petitioner is having effective alternate appeal remedy before the Debts Recovery Tribunal and without exhausting that remedy, the petitioner cannot invoke the remedy under Article 226 of the Constitution. Besides, the 3rd respondent also filed S.A.No. 148/2022 before the Debts Recovery Tribunal and obtained conditional stay.

7. Therefore, the Writ Petition is dismissed with liberty to the petitioner to approach the Debts Recovery Tribunal, for appropriate remedy. No costs. Connected miscellaneous petition is closed.

[D.K.K.,J.] & [L.V.G.,J.]
16.02.2023

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

D.KRISHNAKUMAR, J.
and
L.VICTORIA GOWRI, J.

bala

ORDER MADE IN
W.P(MD)No.8590 of 2022
DATED : 16.02.2023