



W.P(MD)No.11539 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.05.2023

CORAM:

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.P(MD)No.11539 of 2023
and
W.M.P(MD) Nos.10037 and 10038 of 2023
and
C.R.P(MD) No.1236 of 2023
and C.M.P(MD) No.6045 of 2023**

W.P(MD)No.11539 of 2023

Ramachandran

... Petitioner

Vs.

1.The Recovery Officer,
Debt Recovery Tribunal,
Madurai.

2.The Chief Manager,
Indian Bank,
NGO Colony Branch,
Trivandrum Road,
Tirunelveli – 627 005.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the impugned proceedings being Sale proclamation in R.C.No. 13/2022 dated 22.03.2023 on the file of the first respondent and the



W.P(MD)No.11539 of 2023

consequent E-auction notice in R.C.No.13/2022 dated 22.03.2023 on the file of the first respondent and quash the same.

For Petitioner :Mr.G.Prabhu Rajadurai

For 2nd Respondent :Mr.C.Karthik

C.R.P(MD)No.1236 of 2023

Ramachandran

... Petitioner/Petitioner/
Certificate Debtor

Vs.

The Chief Manager,
Indian Bank,
NGO Colony Branch,
Trivandrum Road,
Tirunelveli – 627 005.

... Respondent/Respondent/
Certificate Holder

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying this Court to set aside the order of the Recovery Officer, Debts Recovery Tribunal, Madurai, dated 02.05.2023, returning the stay application in DRT Diary No.5 of 2023 and the objection petition in DRT Diary No.6 of 2023 and allow this revision petition.

For Petitioner :Mr.G.Prabhu Rajadurai

For Respondent :Mr.C.Karthik



W.P(MD)No.11539 of 2023

COMMON ORDER

WEB COPY

The petitioner Thiru.Ramachandran had availed a loan from Indian Bank. He committed default. The Bank filed O.A. No.51 of 2013 before the Debt Recovery Tribunal, Madurai, for recovering the dues. The said application was allowed on 28.09.2021. Questioning the same, the petitioner is said to have filed an appeal before the Debt Recovery Appellate Tribunal, which is yet to be numbered. In the mean while, for enforcing the order passed by the Debt Recovery Tribunal, the sale proclamation was issued. The petitioner filed a petition for deferring the sale proclamation. The Recovery Officer did not entertain the petition and it was returned on 02.05.2023. Questioning the same C.R.P(MD) No.1236 of 2023 has been filed. Challenging the sale notification, W.P(MD) No.11539 of 2023 has been filed.

2. The learned counsel appearing for the petitioner reiterated the contentions said out in the affidavit filed in support of the Writ Petition and memorandum of grounds filed in support of the Civil Revision Petition and called upon this Court to grant relief as prayed for.



W.P(MD)No.11539 of 2023

3. The learned standing counsel appearing for the respondent Bank strongly contended that no case for grant of relief has been made out. He pointed out that the petitioner has to necessarily pursue the appeal remedy and not invoke the writ jurisdiction. He pressed for dismissal of the Civil Revision Petition as well as the Writ Petition.

4. We carefully considered the rival contentions and went through the materials available on record.

5. We obviously cannot go into the merits of the matter. The only question that calls for our consideration is whether the petitioner is entitled to seek postponement of sale proclamation. It is true that the petition was filed under Section 19(25) of R.D.B Act, 1993. The petitioner should have made a specific reference to Rule 66, II schedule of the Income Tax Act. It is well settled that misquoting or non-quoting the relevant provision cannot come in the way of granting relief. The petitioner has shown his bonafide and also fulfilled the statutory requirements by producing the Demand Draft for 25% of the amount as demanded in the sale proclamation.



W.P(MD)No.11539 of 2023

6. We are therefore of the view that the petition for postponement of sale proclamation has to be considered by the Recovery Officer on merits. In this view of the matter, the order dated 02.05.2023 returning the petitioner's application for postponement is set aside. The matter is remitted back to the file of the Recovery Officer, (Debt Recovery Tribunal), Madurai.

7. Registry is directed to return the original petition filed by the petitioner herein to the counsel for the petitioner. The petitioner shall re-present the same within ten days from today.

8. The learned counsel for the petitioner produced the Demand Draft for a sum of Rs.18,25,000/- (Eighteen Lakhs and Twenty Five Thousands only) (representing 25% of liability). The learned standing counsel for the respondent bank is directed to accept the same. Since 25% of the liability has been cleared, the auction scheduled to be held tomorrow (11.05.2023) shall stand postponed and it will abide by the outcome of the order to be passed by the Recovery Officer. The Recovery Officer shall pass final order on merits within a period of six weeks from the date of representing the returned application.



W.P(MD)No.11539 of 2023

WEB COPY

9. On these terms, the Writ Petition stands disposed of and the C.R.P(MD) No.1236 of 2023 stands allowed. Consequently, connected Miscellaneous Petitions are closed.

[G.R.S.,J.] [S.S.Y.,J.]
10.05.2023

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

am/Indu



WEB COPY



W.P(MD)No.11539 of 2023

G.R.SWAMINATHAN, J.

AND

S.SRIMATHY, J.

am/Indu

ORDER MADE IN

W.P(MD)No.11539 of 2023

and

C.R.P(MD) No.1236 of 2023

10.05.2023