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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.08.2023**

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**W.P(MD)NO.20712 OF 2023
and
W.M.P(MD)Nos.17132 and 17133 of 2023**

Arun

:Petitioner

.VS.

1.The Authorized Officer,
Canara Bank,
Thuvakudi,
Tiruchirappalli.

2.The Sub-Registrar,
Tiruverumbur,
Tiruchirappalli.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in Ref.SARFAESI/3314-SSE/S/2023-24, dated 19.07.2023 and to quash the same and to direct the first respondent to issue a sale certificate in favour of the Petitioner as the entire payment is made within 90 days as per Rule 9(4) of the Security(Enforcement)Rules, 2002 and forward a copy to the second respondent.

For Petitioner

:Mr.K.Prabakaran
for M/s.KPS Law Associates



For Respondent-1

:Mr.P.Madhav Alexander

For Respondent-2

:Mr.M.Linga Durai
Special Government Pleader

ORDER

(Order of the Court was made by S.S.SUNDAR,J)

This Writ Petition is filed by the previous auction purchaser, challenging the subsequent sale notice, dated 19.07.2022.

2.Mr.P.Madhav Alexander, learned counsel takes notice for the first respondent/Bank and Mr.M.Linga Durai, learned Special Government Pleader takes notice for the second respondent. By consent of both parties,the Writ Petition is taken up for final disposal at the admission stage itself.

3.The Petitioner appears to be the brother of the borrower, whose loan account was declared as Non-Performing Asset(NPA) long back. When the property was brought to sale earlier on 31.3.2023, the Petitioner participated in the auction and was the successful person whose offer is the highest amount. The sale was confirmed in favour of the Petitioner for a sum of Rs.22,27,000/- and the sale was also confirmed on 03.04.2023.The Petitioner, who



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pay 10% of the bid amount, states that he has also remitted a sum of Rs.3,37,000/- on 01.04.2023. However, it is admitted by the Petitioner that he did not pay the balance amount in terms of the conditions of sale. It is also admitted by the Petitioner that the entire money paid by him was refunded to him, as he could not mobilise the remaining amount.

4.From the conduct of the Petitioner, it is seen that the first respondent-Bank has permitted the Petitioner to withdraw 25% of the bid amount as per the terms and conditions of the sale only to save the petitioner from facing forfeiture of the entire amount. It is not in dispute that the first respondent/Bank was entitled to forfeiture of the entire amount on the next date. It had generously permitted the Petitioner to withdraw 25% of the bid amount, which was credited to the account of the Petitioner, with due intimation. The Petitioner has not approached this Court when the amount was refunded to the Petitioner on his request and he did not raise any objection or express his willingness to pay the balance amount of 75% within the time stipulated. Therefore, this Court is unable to see any bona-fide on the part of the Petitioner. The Petitioner now challenges the subsequent sale notice even without impleading the



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borrower. The contentions of the first respondent-Bank that the Petitioner, who is none else than the brother of the borrower, has colluded with his brother to prevent its sale, cannot be discarded. Therefore, this Court finds no merit in the Writ Petition.

5. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

[S.S.S.R.,J.] [D.B.C,J.]
24.08.2023

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

vsn

To

1.The Authorized Officer,
Canara Bank,
Thuvakudi,
Tiruchirappalli.

2.The Sub-Registrar,
Tiruverumbur,
Tiruchirappalli.

S.S.SUNDAR, J.
AND



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D.BHARATHA CHAKRAVARTHY,J.

vsn

ORDER MADE IN
W.P(MD)NO.20712 OF 2023
and
W.M.P(MD)Nos.17132 and
17133 of 2023

24.08.2023