



W.P(MD)Nos.22332 & 22333 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.01.2023

CORAM:

**THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P(MD)Nos.22332 & 22333 of 2021
and
W.M.P(MD)Nos.18884, 18891 & 18892 of 2021**

W.P(MD)No.22332 of 2021:-

M/s.Arun Polymers,
Represented by its Proprietor,
Arun Kumar.

... Petitioner

vs.

1.The Authorized Officer,
Canara Bank,
SME Branch,
Nehruji Nagar,
Dindigul District.

2.Vinodh Kumar

3.M/s.Kumars Polybag India Private Limited,
Represented by its Director,
K.Ravi Kumar.

... Respondents

(R – 3 impleaded vide order dated 18.03.2022
in W.M.P(MD)No.4001 of 2022)



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the learned Chief Judicial Magistrate, Dindigul in CrI.M.P.No.5855 of 2021 dated 06.09.2021 and to quash the same as illegal.

For Petitioner	: Mr.Veera Kathiravan Senior Counsel for Mr.S.Ram Sundar Vijay Raj
For R – 1	: Mr.N.Dilip Kumar Standing Counsel
For R – 2	: No appearance
For R – 3	: Mr.M.Ajmal Khan Senior Counsel for M/s.Ajmal Associates

W.P(MD)No.22333 of 2021:-

M/s.Arun Polymers,
Represented by its Proprietor,
Arun Kumar.

... Petitioner

vs.

1.The Authorized Officer,
Canara Bank,
SME Branch,
Nehruji Nagar,
Dindigul District.

2.Vinodh Kumar

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3.M/s.Kumars Polybag India Private Limited,
Represented by its Director,
K.Ravi Kumar.

... Respondents

(R – 3 impleaded vide order dated 18.03.2022
in W.M.P(MD)No.4000 of 2022)

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned two sale notices of the first respondent in Ref.Nos.403626100007, 4036773000021, 4036766000024, 4036766000027 dated 03.11.2021 and to quash the same as illegal and consequently permit the petitioner to clear the dues payable by him in consonance by the OTS offer, dated 27.08.2021.

***(Prayer amended vide order dated 25.01.2023
in W.M.P(MD)No.4022 of 2022)***

For Petitioner	: Mr.Veera Kathiravan Senior Counsel for Mr.S.Ram Sundar Vijay Raj
For R – 1	: Mr.N.Dilip Kumar Standing Counsel
For R – 2	: No appearance
For R – 3	: Mr.M.Ajmal Khan Senior Counsel for M/s.Ajmal Associates



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COMMON ORDER

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

W.P(MD)No.22332 of 2021 is filed seeking issuance of a Writ of Certiorari, to quash the impugned order passed by the learned Chief Judicial Magistrate, Dindigul in CrI.M.P.No.5855 of 2021 dated 06.09.2021.

2.W.P(MD)No.22333 of 2021 is filed seeking issuance of a Writ of Certiorarified Mandamus, to quash the impugned notices issued by the first respondent in Ref.Nos.403626100007, 4036773000021, 4036766000024, 4036766000027, dated 03.11.2021 and consequently to permit the petitioner to clear the dues payable by him in consonance with the OTS offer, dated 27.08.2021.

3.According to the petitioner, he and his father availed loans from the first respondent Bank and five properties were mortgaged towards security for the loan amount. Since the petitioner had failed to repay the loan amount, the first respondent issued a demand notice, dated 04.09.2019 to the petitioner. In the meanwhile, an E-auction sale notice



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was issued on 04.02.2021 bringing the properties mortgaged with the first respondent Bank by fixing a date for sale on 12.03.2021. Being aggrieved over the same, the petitioner filed an appeal along with a stay petition in S.A.No.97 of 2021 before the Debts Recovery Tribunal, Madurai. The said petition for stay in I.A.No.391 of 2021 was not considered properly and hence, the same was dismissed on 11.03.2021. At the same time, though the bid was conducted, no competent bidder participated and thereafter, three E-auction notices were issued on 21.04.2021, 06.08.2021 and 03.09.2021 respectively, but all of them had become infructuous. In the meanwhile, the first respondent also initiated proceedings before the learned Chief Judicial Magistrate, Dindigul, by filing a petition in CrI.M.P.No. 5855 of 2021 to get the possession of the properties as mentioned in the E-auction sale notice. The learned Chief Judicial Magistrate, Dindigul by impugned order 06.09.2021 allowed the application and thereby appointed an Advocate Commissioner. Challenging the same, the petitioner filed a Writ Petition in W.P(MD)No.22332 of 2021.

4.Further, on 03.11.2021, two other sale notices were also issued, one in respect of the movables ie., the machineries attached with the immovable, for the business operation. The other sale notice was issued



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in respect of the immovables which are four in number. The E-auction sale notices, dated 03.11.2021 through which the date of auction is fixed on 22.11.2021, is the impugned notices in W.P(MD)No.22333 of 2021.

5.The learned senior counsel appearing for the petitioner vehemently argued that the first respondent Bank had brought the aforesaid properties for sale, completely violating the provisions of the SARFAESI Act. According to the petitioner, the first respondent Bank and the auction purchaser had colluded with each other and purchased the said properties by undervaluing the same and also stated that the petitioner has taken all the efforts for a negotiation to settle the said amount under One Time Settlement scheme, however, arbitrarily, the same was rejected by the first respondent Bank. Hence, according to the petitioner, the second respondent is not the actual bidder and so far, he has not paid any payment to satisfy the bid condition, but only with an intention to safeguard the petitioner's right over the property had participated in the said auction and he has purchased the said property through E-auction and the same is unenforceable in law. On the aforesaid allegations, the petitioner has filed the present Writ Petitions before this Court.



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6.The learned counsel appearing for the first respondent Bank denied the entire allegations made by the petitioner and submitted that the first respondent Bank has conducted the said auction in accordance with the provisions of law. According to the first respondent Bank, the aforesaid impugned sale auction notice, through which four properties were brought for auction sale and on the same date, another notification was issued in respect of the movable property for sale. According to the first respondent Bank, the first schedule property was sold in the aforesaid impugned auction notification and subsequently, the property Nos.2 and 3 were also sold in the sale auction notification and as far as the remaining fourth property is concerned, the said property is still with the first respondent Bank and they have not brought the said property for auction sale. Apart from that, two other properties are also not brought for auction sale. Further, another sale notice in respect of movable properties is concerned, the plant and machinery have already been sold in the auction sale and the same was purchased by the auction purchaser.



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7. According to the first respondent Bank, the sale certificate was issued on 21.02.2022 and then it was presented for registration on 22.02.2022, the same was registered on 24.02.2022. But this Court has granted an interim order in W.P(MD)No.3558 of 2022 at 01.00 p.m., on 24.02.2022. Prior to that, the entire registration process has been completed. Therefore, the first respondent Bank is not in disobedience the order of this Court. The petitioner has also challenged the auction sale notice dated 04.02.2021 in S.A.No.97 of 2021 before the Debts Recovery Tribunal, Madurai and the same is pending. According to the first respondent Bank, the said Writ Petitions are not maintainable and the petitioner has a remedy before the Debts Recovery Tribunal to challenge all these proceedings.

8. According to the learned Senior Counsel appearing for the third respondent, the auction purchaser had participated in the said auction and purchased the said property and paid the entire sale consideration amount, sale certificate was issued and the same is also registered. Therefore, the third respondent is entitled to the redemption of the said property by relying upon the decision of the Honourable Apex Court in



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Dwarika Prasad and State of Uttar Pradesh and others reported in
2018 (3) CTC 877.

9.It is also brought to the notice of this Court that when W.P(MD)No.3558 of 2022 came up for hearing before this Court on 24.02.2022, this Court had granted an interim order and directed the Registry to tag the Writ Petition along with W.P(MD)Nos.22332 & 22333 of 2021. Pursuant to the same, on 26.08.2022 in W.P(MD)Nos.22332 & 22333 of 2021 & 3558 of 2022, this Court passed the following order:-

"Learned Standing Counsel for the respondent Bank submits that the sale had already taken place and the third party purchaser has also been issued with sale certificate.

2.However, it is stated that the sale is questioned on several irregularities. In such circumstances, there shall be an interim order to maintain status quo prevailing as on date for a period of four weeks, provided the petitioner deposits a sum of Rs.1 crore in an escrow account, within four weeks from today.



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3.Post the matter after four weeks for reporting compliance.

Pursuant to the interim direction issued by this Court in W.P(MD)Nos.22332 & 22333 of 2021 & 3558 of 2022, dated 26.08.2022, the petitioner has also deposited a sum of Rs.1 crore in the escrow account.

10.Considering the submissions made on either side, the petitioner has raised several grounds in the Writ Petitions alleging that fraud has been played on the part of the auction purchaser and the first respondent Bank and the petitioner has challenged the impugned sale notice before this Court by making various allegations in the Writ Petitions. At the time of admission, no interim order has been granted in W.P(MD)Nos. 22332 & 22333 of 2021. The petitioner has challenged the order passed by the learned Chief Judicial Magistrate, Dindigul in CrI.M.P.Nos.5855 of 2021, dated 06.09.2021 under Section 14 of the SARFAESI Act and the sale auction notices dated 03.11.2021. In the aforesaid Writ Petitions, at the time of admission, no interim order was granted by this Court. Therefore, all the allegations that are raised by the petitioner, cannot be decided in the present Writ Petitions and further, the petitioner is having a efficacious



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alternative remedy before the Debts Recovery Tribunal to challenge the impugned notices issued by the first respondent Bank. Therefore, we are not inclined to interfere with the impugned auction notices issued by the first respondent, dated 03.11.2021 and the order passed by the learned Chief Judicial Magistrate, Dindigul in CrI.M.P.Nos.5855 of 2021, dated 06.09.2021 under Section 14 of the SARFAESI Act. Hence, there is no merit in the Writ Petitions.

11.In view of the above reasonings, we are not inclined to accept the contentions putforth by the petitioner and consequently, the same is liable to be dismissed.

12.Hence, it is for the petitioner either to seek for the refund of the said amount, which was deposited as per the order of this Court W.P(MD)Nos.22332 & 22333 of 2021 & 3558 of 2022, dated 26.08.2022 or the petitioner can very well agitate before the Debts Recovery Tribunal and obtain necessary orders in the manner known to law. In the meantime, the interim order of status quo already granted by this Court shall continue for a further period of three weeks.



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13.In fine, these Writ Petitions are dismissed. No costs.
Consequently, connected Miscellaneous Petitions are closed.

[D.K.K.,J.] [R.V.,J.]
25.01.2023
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NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

- 1.The Authorized Officer,
Canara Bank,
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Nehruji Nagar,
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- 2.M/s.Kumars Polybag India Private Limited,
Represented by its Director,
K.Ravi Kumar.



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D.KRISHNAKUMAR,J.
and
R.VIJAYAKUMAR,J.

ps

ORDER MADE IN
W.P(MD)Nos.22332 & 22333 of 2021

DATED : 25.01.2023
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