BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

W.P.(MD) No.22182 of 2023

S.Deivendran ... Petitioner

-vs-

The Authorized Officer
Tamilnadu Mercantile Bank Limited
Sindhamani Branch
Kamarajar Salai
Madurai-9 ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the respondent bank to refund the deposited sale consideration amount of Rs.12,05,000/- with interest towards the E-Auction sale dated 31.03.2023 conducted by the respondent bank to the petitioner within a time frame fixed by this Court.

For Petitioner : Mr.R.Rajamohan

For Respondent : Mr.N.Dilip Kumar
Standing Counsel

ORDER

[Order of the Court was made by S.M.SUBRAMANIAM, J.]

The relief sought for in this writ petition is to direct the respondent – Bank to refund the deposited sale consideration amount of Rs.12,05,000/- with interest towards the e-auction sale dated 31.03.2023 conducted by the respondent – Bank to the petitioner, within a time frame fixed by this Court.

2. Contractual obligations between the parties cannot be subjected to a writ proceedings under Article 226 of the Constitution of India. The present case falls under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002. The e-auction was conducted on 31.03.2023 for the auction of the property comprised in Old R.S.No.265/2A, new R.S.No.265/2A-1, 265/2A-2 &

265/2A-3 of Kommadikottai Village, Sathankulam Taluk, Thoothukudi District. As per the sale notice, the respondent – Bank fixed the reserved price for the property as Rs.48,15,000/- and the earnest money deposit (EMD) was to be paid on or before 31.03.2023. The petitioner participated in the auction by depositing the EMD amount of Rs.4,81,500/- on 31.03.2023. Thus, the petitioner was declared as the successful auction purchaser. Thereafter, he remitted a sum of Rs.7,23,500/- on the next working day i.e.03.04.2023, but he could not pay the balance sale price of Rs.36,15,000/- on or before 15.04.2023. Thus, the petitioner / auction purchaser submitted a representation and the respondent – Bank considered the same and granted time to the petitioner to deposit the remaining sale price. But, the petitioner committed default in depositing the remaining sale price. Thus, the petitioner is not entitled to secure any relief from the hands of this Court.

3. *Learned Standing Counsel appearing for the respondent – Bank relied on the Judgment of the Honourable Supreme Court in the case of the* ***Authorized Officer, State Bank of India vs. C.Natarajan and another [2023 SCC OnLine SC 510]***, wherein the Apex Court has made the following observations:

"35. In the light of guidance provided by the above decisions, what needs to be ascertained first is whether the Bank received or derived any benefit or advantage by forfeiture of 25% of the sale price. We do not think that the Bank has been enriched, much less unjustly enriched, by reason of the impugned forfeiture. Receipt of 25% of the sale price by the Bank from the contesting respondent was not the outcome of any private negotiation or arrangement between them. It was pursuant to a public auction, involving a process of offer and acceptance, and it was in terms of statutory provisions contained in the Rules, particularly rule 9(3), that money changed hands for a definite purpose. Receipt of 25% of the sale price does not constitute a benefit, a fortiori, retention thereof by forfeiture cannot be termed unjust or inequitable, so as to attract the doctrine of unjust enrichment. The Bank, as a secured creditor, is entitled in law to enforce the security interest and in the process to initiate all such steps and take all such measures for protection of public interest by recovering the public money, lent to a borrower and who has squandered it, in a manner authorized by law. The contesting respondent participated in the auction well and truly aware of the risk of having 25% of the sale price forfeited in case of any default or failure on his part to make payment of the balance amount of the sale price. Question of the Bank being enriched by a forfeiture, which

is in the nature of a statutory penalty, does not and cannot therefore arise in the circumstances.

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39. One of the points raised by counsel for the Authorized Officer is that the writ petition of the contesting respondent was not maintainable having regard to the alternative remedy available to him under section 17(1) of the SARFAESI Act. The objection to the maintainability of the writ petition has substance; but since we have examined the questions arising for decision on its merits, relegating the contesting respondent to the forum under section 17(1) of the SARFAESI Act would serve no useful purpose."

4. In view of the fact that the petitioner has committed default in making the payment of the sale price, he is not entitled to the relief as such sought for in this writ petition and more so, such a contractual dispute between the parties cannot be entertained by way of a writ proceedings under Article 226 of the Constitution of India.

5. Accordingly, the writ petition is dismissed. It is needless to state that the petitioner may approach the Debts Recovery Tribunal under Section 17 SARFAESI Act, if any grievance exists and to be redressed. No costs.

[S.M.S., J.] **[R.K.M., J.]**

03.11.2023

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

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S.M.SUBRAMANIAM, J.
and
R.KALAIMATHI, J.

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