



W.P(MD)No.28268 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.02.2023

CORAM:

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

**W.P(MD)No.28268 of 2022
and W.M.P(MD)No.22317 of 2022**

T.Vijayakumar

... Petitioner

vs.

1.The Authorized Officer,
Tamil Nadu Mercantile Bank Limited,
Karungal Branch,
Marthandam Highway Road,
Karungal, Kanyakumari District.

2.V.Varghese,
S/o.Varuvel,
D.No.2/7B1, Kaikavilagam,
Udhayamarthandam,
Vilavancode,
Kanyakumari District – 629 178.

... Respondents

(R – 2 impleaded vide order dated 20.02.2023
made in W.M.P(MD)No.2726 of 2023)

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned sale notice, dated 07.11.2022, No.Nil, issued by the respondent herein and quash the same as illegal.



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For Petitioner : Mr.C.Kishore
For R – 1 : Mr.N.Dilip Kumar
Standing Counsel

ORDER

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

Since the Presiding Officer, Coimbatore, is in-charge of the Debts Recovery Tribunal, Madurai and the Debts Recovery Tribunal, Madurai is functioning weekly once ie., on every Friday, the petitioner has filed the present Writ Petition.

2.The prayer in this Writ Petition is seeking for issuance of a Writ of Certiorari, to quash the impugned sale notice, dated 07.11.2022, No.Nil, issued by the respondent.

3.The learned counsel appearing for the petitioner submitted that the petitioner already filed a Writ Petition in W.P(MD)No.20994 of 2022, challenging the sale notice issued by the first respondent, dated 25.08.2022 and this Court, by order, dated 02.09.2022, passed a conditional order, directing the petitioner to pay a sum of Rs.4,25,000/- on or before

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30.09.2022, a further sum of Rs.4,00,000/- on or before 31.10.2022, a further sum of Rs.4,00,000/- on or before 30.11.2022 and a further sum of Rs.4,00,000/- on or before 31.12.2022.

4.Pursuant to the said order, dated 02.09.2022, the petitioner paid the first instalment of Rs.4,25,000/- on 30.09.2022 and the petitioner defaulted for the second and third instalments and paid the defaulted second and third instalments along with the fourth instalment for a sum of Rs.12,00,000/- on 13.12.2022 itself. In the meanwhile, since there was a default for the second instalment, the first respondent Bank issued a sale notice on 07.11.2022, to bring the property for sale on 15.12.2022. Challenging the impugned order, dated 07.11.2022, the petitioner has filed the present Writ Petition.

5.When the matter came up for hearing on 15.12.2022, this Court directed the petitioner to pay 25% of the outstanding amount as on date to the first respondent Bank on or before 30.01.2023. In compliance with the said order, the petitioner paid a sum of Rs.6,32,000/- on 30.01.2023 to the first respondent Bank and another sum of Rs.7,09,000/- on 31.01.2023 to the first respondent Bank and there is a one day delay in



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WEB COURT making the aforesaid payment.

6.Again, when the matter came up for hearing on 08.02.2023, the petitioner undertook to settle the remaining outstanding amount of Rs.42,26,467/- as on 31.01.2023 to the first respondent Bank in two instalments and the first instalment shall be paid on or before 03.03.2023 and the second instalment shall be paid on or before 30.03.2023 and this Court, directed the petitioner to file an undertaking affidavit to that effect.

7.Today, when the matter is taken up for hearing, the learned counsel appearing for the petitioner filed an undertaking affidavit and submitted that the petitioner is ready to settle the remaining outstanding amount of Rs.42,26,467/- as on 31.01.2023 to the first respondent Bank in two instalments and the first instalment of Rs.22,00,000/- shall be paid on or before 28.02.2023 and the second instalment, with remaining outstanding amount shall be paid on or before 31.03.2023. In the event of any default made, the first respondent Bank is at liberty to proceed further in accordance with law.



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8.The learned counsel appearing for the first respondent Bank also agreed to the aforesaid proposal made by the petitioner and submitted that the sale has been confirmed in favour of the second respondent/auction purchaser on payment of 25% of the sale price. Hence, the learned counsel appearing for the first respondent Bank submitted that if there is any default in paying the amount by the petitioner, liberty is granted to the first respondent Bank to issue the sale certificate in favour of the second respondent/auction purchaser.

9.Recording the aforesaid submission made by the learned counsel appearing on either side and as agreed by both the parties, this Court is inclined to pass the following order:-

(i) The petitioner is directed to pay the remaining outstanding amount of Rs.42,26,467/- as on 31.01.2023 to the first respondent Bank in two instalments and the first instalment of Rs.22,00,000/- shall be paid on or before 28.02.2023 and the second instalment, with remaining outstanding amount including the interest and other charges, shall be paid on or before 31.03.2023.



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(ii) Till such time, no coercive steps shall be taken by the first respondent Bank.

(iii) If the petitioner fails to pay the amount in any one of the instalments, the first respondent Bank may proceed further and issue the sale certificate in favour of the second respondent/auction purchaser, in accordance with law.

10. With the above directions, this Writ Petition is disposed of.
No costs. Consequently, connected Miscellaneous Petition is closed.

[D.K.K.,J.] [L.V.G.,J.]
20.02.2023
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NCC : Yes / No
Index : Yes / No
Internet : Yes
ps

Note:- Registry is directed to communicate the copy of the order to the second respondent.



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To

- 1.The Authorized Officer,
Tamil Nadu Mercantile Bank Limited,
Karungal Branch,
Marthandam Highway Road,
Karungal,
Kanyakumari District.

Copy To:-

- 2.V.Varghese,
S/o.Varuvel,
D.No.2/7B1, Kaikavilagam,
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D. KRISHNAKUMAR,J.
and
L.VICTORIA GOWRI,J.

ps

ORDER MADE IN
W.P(MD)No.28268 of 2022

DATED : 20.02.2023
(2/2)