



W.P.No.4770 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2024

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.4770 of 2024

Chitra

.. Petitioner

Vs.

Union Bank of India
Rep. by its Authorised Officer
Coimbatore GKNM Hospital Branch
Nethaji Road, P.N.Palayam
Coimbatore 641 037.

.. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorarified Mandamus calling for the records culminating in the order of respondent vide its letter REF reco/sarfaesi/002 dated 30/12/2023 and quash the same, further directing the respondent to refund the forfeited EMD amount of Rs 8,67,500/- along with interest and damages.

For the Petitioner : Mr.M.Jayaraj

For the Respondent : Mr.M.Somasundar



W.P.No.4770 of 2024

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ORDER
(Made by the Hon'ble Chief Justice)

We have heard Mr.M.Jayaraj, learned counsel for the petitioner and Mr.M.Somasundar, learned counsel for the respondent.

2. The petitioner had bid in an auction conducted by the respondent bank in respect of the secured asset of its borrower. The petitioner was declared as the successful bidder. The sale was conducted on 26.04.2023. The petitioner deposited 25% of the sale price on 27.04.2023. The petitioner was required to deposit the entire amount on or before 11.05.2023. The same was not deposited. Only part of the amount was deposited. The petitioner sought time. The bank did not extend the time. The bank has forfeited a sum of Rs.8,67,500/- (Rupees eight lakh sixty seven thousand and five hundred only) and has refunded Rs.10,52,500/- (Rupees ten lakh fifty two thousand and five hundred only), i.e. 25% of the sale price deposited by the petitioner. Aggrieved thereby, the present writ petition.



W.P.No.4770 of 2024

WEB COPY

3. Learned counsel for the petitioner submits that the respondent bank has recovered the entire amount from the borrower. The bank did not intimate the petitioner that the borrower has filed Securitisation Application challenging the sale and that subsequently, stay has been granted. The respondent bank should act as a model litigant. Once having recovered the entire amount, it is not proper on the part of the bank to forfeit the amount of the petitioner. Learned counsel submits that the letter dated 30.12.2023 was given by the petitioner under duress. The petitioner thought that if that letter was not given, Rs.10,52,500/- (Rupees ten lakh fifty two thousand and five hundred only) would not be refunded.

4. Learned counsel for the bank submits that upon failure of the petitioner to deposit the entire amount, the amount deposited needs to be forfeited as per Rule 9(4) and 9(5) of the Security Interest (Enforcement) Rules, 2002. Learned counsel relies upon the judgment of the Apex Court in *Authorised Officer, Central Bank of India v. Shanmugavelu* [AIR 2024 SC 962].



W.P.No.4770 of 2024

WEB COPY

5. It appears that the petitioner was required to deposit the entire amount of sale on or before 11.05.2023. The petitioner could not deposit the amount as she did not have money. She sought extension of time which was not granted by the bank. The stay was obtained by the borrower on 17.07.2023, i.e. much after the lapse of the period of 15 days.

6. The petitioner had given a letter to the bank to refund the amount in connection with the e-auction dated 26.04.2023. The bank issued a letter without prejudice and stated that the petitioner may obtain refund of the amount by deducting 25% of the sale price. The petitioner thereafter issued a letter accepting the letter of the bank dated 30.12.2023 and requesting to refund the amount of Rs.10,52,500/- (Rupees ten lakh fifty two thousand and five hundred only), giving her account number.

7. It is not disputed that the petitioner has received a sum of Rs.10,52,500/- (Rupees ten lakh fifty two thousand and five hundred



W.P.No.4770 of 2024

WEB COPY

only) from the bank and has, thereafter, filed the present writ petition.

8. It is also fact that the bank has recovered the entire amount from the borrower. The petitioner had already given a letter accepting the refund of Rs.10,52,500/- (Rupees ten lakh fifty two thousand and five hundred only). The petitioner deposited about Rs.19,20,000/- (Rupees nineteen lakh and twenty thousand only). The bank was ready to pay Rs.10,52,500/- (Rupees ten lakh fifty two thousand and five hundred only) which the petitioner had accepted by issuing a letter and giving her account number. The same amounts to accord and satisfaction of the amount payable.

9. After having received the said amount, the petitioner has filed the writ petition. The petitioner could have agitated about the forfeiture of the amount at that time itself. However, she agreed to receive Rs.10,52,500/- (Rupees ten lakh fifty two thousand and five hundred only) instead of Rs.19,20,000/- (Rupees nineteen lakh and twenty thousand only).



W.P.No.4770 of 2024

WEB COPY

10. In view of that, it will not be open now for the petitioner to contend that she should be paid the entire amount deposited by her. Accordingly, the writ petition is disposed of. There shall be no order as to costs.

(S.V.G., CJ.)

(J.S.N.P., J.)

16.04.2024

Index : Yes/No
Neutral Citation : Yes/No
kpl

To

The Authorised Officer
Union Bank of India
Coimbatore GKNM Hospital Branch
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W.P.No.4770 of 2024

THE HON'BLE CHIEF JUSTICE
AND
J.SATHYA NARAYANA PRASAD, J

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W.P.No.4770 of 2024

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