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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :: 20.03.2024

Delivered on :: 02.04.2024

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

WP Nos.10796, 11008, 11007 of 2023
and
Cont.P.No.482 of 2024

WP No.10796 of 2023

M.Anandabalaji : Petitioner

versus

1.The District Collector,
Coimbatore District

2.The Tahsildar,
Pollachi, Coimbatore District

3.Tamil Nadu Mercantile Bank Ltd.,
Pollachi Branch,
rep. By its Authorised officer
D.Nos.76 and 77,
New Scheme Road, Pollachi 642 001

4.Sasi Kumar : Respondents

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Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records in connection with the order of the Debt Recovery Appellate Tribunal, Chennai, on 14.02.2023 in RA (SA) No.38/2022 and order of the Debts Recovery Tribunal, Coimbatore dated 03.02.2021 in SA No.416/2020 and the order of 1st respondent / District Collector, Coimbatore in Dis.No.25242/2018/E3 dated 16.08.2019 under Section 14 of the Act and set aside the same and consequently restore the possession of the property comprised in SF No.24/1 (old No.24) situate at D.No.2/142 (New Door No.2/245) Devi nagar, Plot No.A1 Solapalayam Village, Pollachi to the petitioner.

For Petitioner	:	Mr.Srinath Sridevan, Senior Counsel for Mr.P.Arumugavel
For Respondents 1, 2	:	Mr.A.Edwin Prabakar, State Government Pleader, assisted by Mr.K.Karthik Jagannath, Government Advocate
For Respondent No.3	:	Mr.Arockia Satish, for Mr.S.Sethuraman
For Respondent No.4	:	Mr.Om Prakash, Senior Counsel, for Mr.Imayavaramban, for M/s.Ramalingam Associates

WP No.11008 of 2023

M.Ananda Balaji : Petitioner

versus

1.The Tamil Nadu Mercantile Bank Ltd.,
Pollachi Branch,
rep. By its Authorised Officer,
D.Nos.76 and 77,
New Scheme Road, Pollachi 642 001

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2.Vidhya : Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records in connection with the order of the Debt Recovery Appellate Tribunal, Chennai, on 14.02.2023 in RA (SA) No.37/2022 and quash the same.

For Petitioner : Mr.Srinath Sridevan, Senior Counsel
for Mr.P.Arumugavel

For Respondent No.1 : Mr.Arockia Satish,
for Mr.S.Sethuraman

WP No.11007 of 2023

M.Ananda Balaji : Petitioner

versus

1.The Tamil Nadu Mercantile Bank Ltd.,
Pollachi Branch,
rep. By its Authorised Officer,
D.Nos.76 and 77,
New Scheme Road, Pollachi 642 001

2.Vidhya
3.Sasi Kumar : Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records in connection with the order of the Debt Recovery Appellate Tribunal, Chennai, on 14.02.2023 in RA (SA) No.43/2021 and quash the same.

For Petitioner : Mr.Srinath Sridevan, Senior Counsel
for Mr.P.Arumugavel

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For Respondent No.1 : Mr.Arockia Satish,
for Mr.S.Sethuraman

For Respondent No.3 : Mr.Om Prakash,
Senior Counsel,
for Mr.Imayavaramban,
for M/s.Ramalingam Associates

Cont.Petition No.482 of 2024

M.Ananda Balaji : Petitioner

versus

1.Karuppiah
Branch Manager,
The Tamil Nadu Mercantile Bank Ltd.,
Pollachi Branch,
D.Nos.76 and 77,
New Scheme Road, Pollachi 642 001

2.Sasi Kumar
D.No.3/53,
New Godown Street,
Koppanurpudur Village,
Kapalangarai Post,
Kinathukadavu Taluk,
Coimbatore District : Respondents

Prayer: Contempt petition filed to punish the respondents for wilful disobedience of the order of this Court in WP No.10796/2023 dated 12.04.2023.

For Petitioner : Mr.Srinath Sridevan,
Senior Counsel
for Mr.M.Habeebrahman

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For Respondent No.1	:	Mr.Arockia Satish, for Mr.S.Sethuraman
For Respondent No.2	:	Mr.Om Prakash, Senior Counsel, for Mr.Imayavaramban, for M/s.Ramalingam Associates

COMMON ORDER

The Hon'ble Chief Justice

We have heard Mr.Srinath Sridevan, learned Senior Counsel for the petitioner, Mr.Om Prakash, learned Senior Counsel for the auction purchaser, Mr.Arockia Satish for the Tamil Nadu Mercantile Bank Ltd. and Mr.A.Edwin Prabhakar, learned State Government Pleader, for the State.

2. The petitioner enjoyed credit facilities sanctioned by the Tamil Nadu Mercantile Bank Ltd., (for short, 'the Bank'). The account of the petitioner was declared as a non-performing asset. Measures under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Security Interest (Enforcement) Rules, 2002 were initiated by the bank

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against the secured asset of the petitioner. The petitioner filed various securitisation applications before the Debts Recovery Tribunal (for short, 'the Tribunal'). The same are enumerated as under:

(i)	SA No.216 of 2018	Against the possession notice under Section 13(4) of the SARFAESI
(ii)	SA No.261 of 2019	Against the sale notice dated 21.12.2018
(iii)	SA No.416 of 2020	Against the order passed by the learned Magistrate under Section 14 of the SARFAESI.

3. All the three securitisation applications were dismissed by the Tribunal under its judgment and order dated 03.03.2021. The petitioner preferred three separate appeals before the Debt Recovery Appellate Tribunal (for short, 'the Appellate Tribunal'). All the three appeals were dismissed by the Appellate Tribunal under its judgment and order dated 14.02.2023.

4. Aggrieved thereby, the present writ petitions are filed by the petitioner.

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5. WP No.11007 of 2023 is filed against the order of the Tribunal and Appellate Tribunal in the proceedings filed by the petitioner against the sale notice. The decision in the said writ petition would govern the other writ petitions.

WP No.11007 of 2023:

6. Mr.Srinath Sridevan, learned Senior Counsel for the petitioner eruditely canvassed his submissions as under:

> (a) The initial auction sale notice dated 21.08.2018 was issued fixing the upset price of the property at Rs.3,25,25,000/-. Subsequently, within four months, second auction sale notice was issued on 21.12.2018 fixing the upset of Rs.2,92,75,000/-, thereby reducing the upset price by Rs.32,50,000/-. No proper valuation was made. The sale was conducted during the pendency of the earlier proceedings challenging the possession notice.

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(b) The learned Senior Counsel submitted that the petitioner has made payment of the entire outstanding amount.

(c) It is further contended by the learned Senior Counsel that the auction purchaser did not pay the amount within the stipulated period of fifteen days. No order in writing was passed by the bank extending the period for making the payment. No such communication was placed before the Tribunal and the Appellate Tribunal.

(d) The learned Senior Counsel submits that the bank colluded with the auction purchaser. For purchasing the auction property, the bank advanced a loan of Rs.1.50 crore to the auction purchaser on 08.02.2019. After the additional loan was advanced to the auction purchaser, the auction purchaser paid the bid amount.

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(e) Indirectly, it was the bank's money which was used by the auction purchaser to bid and make payment of the auction amount. This act of the bank is not countenanced by law. The sale itself is a fraudulent one. The bank is not entitled to bid in the auction. The bank has funded the amount to purchase the property by the auction purchaser. The subject auction property was taken by the bank as a mortgage in view of the loans provided. It shows the collusion between the auction purchaser and the bank. This aspect has not been considered in its proper perspective. The auction purchaser is the customer of the bank of the same branch and the manager of the bank purposefully colluded with the auction purchaser with vested interest.

(f) The learned Senior Counsel further relies upon the Guidelines on Securitisation of

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Standard Assets issued by the Reserve Bank of India on February 1, 2006 and submits that a true sale of the asset would mean the sale should result in immediate legal separation of the originator from the assets which are sold to the new owner viz. the special purpose vehicle (SPV). The assets should stand completely isolated from the originator, after its transfer to the SPV, i.e., put beyond the originator’s as well as their creditors' reach, even in the event of bankruptcy of the originator. The originator shall not hold any beneficial interest in the asset after its sale to the SPV.

(g) The said RBI Guidelines further states that the originator shall not have any economic interest in the assets after its sale and the SPV shall have no recourse to the originator for any expenses or losses except those specifically permitted under these guidelines.

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(h) The originator is respondent bank in the present case.

(i) The learned Senior Counsel submits that the sale is not truthful and is collusive. Therefore, the same deserves to be set aside.

7. Mr.Om Prakash, learned Senior Counsel for the auction purchaser, submits that all these allegations of collusion are afterthought. No such plea was raised before the Tribunal and/or Appellate Tribunal. The only plea raised before the Tribunal was under-valuation. The same was dealt with by the Tribunal and Appellate Tribunal, exhaustively.

8. The valuation was properly made. When the auction sale notice was issued on 21.08.2018, scheduling the auction on 28.09.2018, there were no bidders. As such, the sale was postponed and fresh notice was issued for auction. It is further submitted by the learned Senior Counsel for the auction purchaser that the auction purchaser has purchased the property in auction from his own funds.

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Only because the auction purchaser is an old customer of the respondent bank and enjoying the credit facilities for a long time, the same would not dis-entitle him from being an auction purchaser. No loan amount has been utilised by the auction purchaser for purchase of the property under auction. The bank had extended the time for payment.

9. The learned counsel for the bank also submits that all these allegations made on behalf of the petitioner are false and afterthought. Time was extended to the auction purchaser to deposit the amount in writing and the same is also placed on record. The auction purchaser has paid the auction amount from his own funds i.e. savings account and not from the cash credit and/or working capital account.

10. We have considered the submissions canvassed by the learned Senior Counsel for the petitioner, auction purchaser and the learned counsel for the bank.

11. There cannot be any dispute with the proposition that the

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bank, a secured creditor, cannot be a purchaser of the asset secured by it, in a public auction. If the same is permitted, that would be unethical; nor can it be comprehended that the bank should fund the amount to a person to purchase the property in auction. The same would be against the public policy.

12. The bank certainly is not entitled to advance monies to the auction purchaser in order to enable him to accomplish the purchase and take security of the property upon a successful bid in the auction.

13. To appreciate the said plea of the petitioner, the factual matrix will have to be scrutinised and navigated.

14. The auction sale notice, pursuant to which the auction sale has taken place, is dated 21.12.2018. The auction it appears, took place on 23.01.2019.

The schedule of payment made by the auction purchaser is as under:

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Date	Transaction Amount	Particulars of payment
23.01.2019	Rs.29,27,500/-	Vide demand draft No.961154
24.01.2019	Rs.44,05,001/-	Vide Cheque No.1495453 from A/c.No.90100710400221
16.03.2019	Rs.28,10,000/-	Vide Cheque No.1495457 from A/c.No.90100710400221
22.03.2019	Rs.25,32,499/-	Vide Cheque No.1495458 from A/c.No.90100710400221
28.03.2019	Rs.69,00,000/-	Vide Cheque No.1495459 from A/c.No.90100710400221
05.04.2019	Rs.15,00,000/-	Vide Cheque No.1495460 from A/c.No.90100710400221
16.04.2019	Rs.52,30,000/-	Vide Cheque No.1495461 from A/c.No.90100710400221
20.04.2019	Rs.30,20,000/-	Vide Cheque No.1495462 from A/c.No.90100710400221
Total	**Rs.2,93,25,000/-**	

15. It appears that the auction purchaser is an old customer of the bank and enjoying credit facilities.

16. Under letter dated 02.02.2019, the auction purchaser sought extension of time upto two months for making the entire payments of the auction bid amount. Time was extended by the bank up to 07.04.2019 under its communication dated 05.02.2019. Subsequently, again an application dated 30.03.2019 was given by the auction

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purchaser to extend the time to make the entire payment up to 20.04.2019. The Bank under its letter dated 04.04.2019, extended the period for payment of the entire amount up to 20.04.2019.

17. On 28.03.2018, the respondent bank sanctioned cash credit facility of Rs.1,00,00,000/- (Rupees One Crore only) to the auction purchaser. On 23.07.2018, another additional cash credit facility was sanctioned by the respondent bank to the auction purchaser. On 08.02.2019, *ad hoc* loan of Rs.1,50,00,000/- was sanctioned in favour of the auction purchaser. On 28.08.2019, seasonal cash credit was sanctioned to the auction purchaser by the respondent bank.

18. From the factual matrix as discussed supra, it doesn't appear that the bank has funded the auction purchaser to purchase the auction property. The fact that the auction purchaser is an old customer of the bank and had an existing CC limit, alone, would not be sufficient to infer that the bank has funded the auction purchaser to purchase the auction property and/or that the sale is not a true sale. Cash credit was sanctioned from time to time for business purpose of

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the auction purchaser. The same was a working capital and not a term loan for purchase of property. It is only in August, 2019, when seasonal cash credit facility was sanctioned, property purchased in auction was mortgaged, that was almost four months after the entire amount under the auction was deposited by the auction purchaser. It would be difficult for the court to arrive at a definite conclusion about the case put-forth by the petitioner. Unless it is unequivocally established that the bank has financed the auction purchaser for the purchase of the auction property, it will not be possible to negate the sale.

19. The Guidelines on Securitisation on Standard Assets relied upon by the learned Senior Counsel for the petitioner would have been relevant to be considered had the bank advanced money to the auction purchaser for purchasing the property under auction. The total factual matrix as observed above, does not lead us to a conclusion that the respondent bank had advanced money to the auction purchaser for purchasing the property under auction.

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20. As far as the other objections are concerned, the Tribunals below have already come to the conclusion that the notice for sale has been properly served. The sale in question was a distress sale and the property was sold for more than the upset price.

21. The other two writ petitions filed against the measure under Section 13(4) of the Act and the order under Section 14 of the Act would not survive. They would depend upon the decision in WP No.11007 of 2023. The auction purchaser is entitled to retain possession of the property upon the sale being confirmed.

22. The petitioner has deposited an amount of Rs.1,95,00,000/- with the Debt Recovery Appellate Tribunal. The petitioner is entitled to withdraw the same along with accrued interest if any. The property is sold for Rs.2,93,25,000/- whereas the dues as per the sale notice is Rs.2,03,55,764/-. The learned counsel for the bank also admitted that the petitioner is entitled for the surplus amount. The surplus amount shall be paid by the bank to the petitioner within two weeks from today.

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23. In light of the aforesaid, all the writ petitions deserve to be dismissed and the same are hereby dismissed. There shall be no order as to costs. Consequently, WMP Nos.10897, 10899, 10737 and 10739 of 2023 are also closed.

24. In view of the dismissal of the writ petitions, the contempt petition also stands disposed of.

(S.V.G., CJ.) **(D.B.C., J.)**
02.04.2024

Index : No
Neutral Citation : No
tar

To

1.The District Collector,
Coimbatore District

2.The Tahsildar,
Pollachi, Coimbatore District

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Tamil Nadu Mercantile Bank Ltd.,
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THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.

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