IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2024

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

W.P.Nos.29040 & 26476 of 2023

1. G.Gnanamani
2. Dr.V.Sudhakar Rajesh .. Petitioners in WP.29040/23

Mrs.Thenmozhi .. Petitioner in WP.26476/23

v.

1. Union Bank of India
   Formerly Andhra Bank
   Kodambakkam Branch
   No.4/9, 4th Main Road
   United India Colony
   Kodambakkam, Chennai-24

2. M/s Amma Marunthagam
   rep.by Prop: Beulah Joyce
   5/9, Sangothiamman Koil
   2nd Cross Street
   Rajakilpakkam, Chennai 600 073

3. V.Paul Athisayaraj
4. Thenmozhi .. Respondents in WP.29040/23

1. Union Bank of India
   Formerly Andhra Bank
   Kodambakkam Branch
   No.4/9, Main Road
   United India Colony
   Kodambakkam, Chennai-24

2. G.Gnanamani
3. V.Sudhakar Rajesh

4. M/s Amma Marunthagam
   rep.by Prop: Beulah Joyce
   5/9, Sangothiamman Koil
   2nd Cross Street
   Rajakilpakkam, Chennai 600 073

5. V.Paul Athisayaraj .. Respondents in WP.26476/23

W.P.No.29040 of 2023 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the 1st respondent Bank to return all the original documents related to the secured asset and to cancel the Memorandum of Title deed dated 16.10.2015 by executing a cancellation deed and subsequently handover the possession of the secured asset to the petitioners.

W.P.No.26476 of 2023 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the 1st respondent to handover the vacant possession of the property situated at No.5/9, Sengothai Amman Koil Second Cross Street situated in No.37, Rajakilpakkam Village, Tambaram Taluk, Kancheepuram District purchased by the petitioner through public E-auction dated 30.03.2022 and executed a sale certificate dated 18th July 2022.

For Petitioners :: Mr.R.Bhalasubramaniom in W.P.No.29040 of 2023

Mr.P.G.Thiyagu for
Mr.K.U.Sale Murugan in
W.P.No.26476 of 2023

For Respondents :: Mr.T.Narayanan for R1 in both WPs
Mr.P.G.Thiyagu for R4 in
W.P.No.29040/23
Mr.R.Bhalasubramaniom
for R2 & R3 in WP.26476/23
No appearance for R2 & R3
in W.P.No.29040/23
No appearance for R5 in
W.P.No.26476/23
Not ready in notice for R4 in
W.P.No.26476/23

COMMON ORDER

(Order of the Court was made by S.S.SUNDAR,J.)

Since the issues are common in both these writ petitions, they are taken up together and disposed of by this common order.

2(a). W.M.P.No.28627 of 2023 seeking to permit the petitioners in W.P.No.29040 of 2023 to file a single writ petition stands allowed. W.P.No.29040 of 2023 is filed by the legal heirs of the guarantor, who stood as such to secure the loan advanced to a third party, for issuance of a mandamus directing the first respondent Bank to return all the original documents related to the secured asset and to cancel the memorandum of title deed dated 16.10.2015 by executing a cancellation deed and subsequently handover the possession of the secured asset to the petitioners.

(b) W.P.No.26476 of 2023 is filed by the successful bidder/auction purchaser for issuance of a mandamus directing the 1st respondent to handover the vacant possession of the property situated at No.5/9, Sengothai Amman Koil Second Cross Street situated in No.37, Rajakilpakkam Village, Tambaram Taluk, Kancheepuram District purchased by the petitioner through public E-auction dated 30.03.2022 and to execute the sale certificate dated 18th July 2022.

3. For convenience, the brief facts as stated in the affidavit filed in support of W.P.No.29040 of 2023 are as follows:-

The first petitioner is the wife of late Vincent Sigamani and the second petitioner is her son. It is the case of the petitioners that the second respondent borrowed money to the tune of Rs.25 lakhs for business purposes and the loan was secured by not only the property offered by the borrower, but also by the collateral security offered by the husband of first petitioner. It is the case of petitioners that Mr.Vincent Sigamani, husband of first petitioner and father of second petitioner, offered the subject property towards securing the loan availed by the second respondent in 2015, without knowing that the document executed by him was one for creating mortgage in respect of his property. The property offered by Mr.Vincent Sigamani is a residential plot surrounded by houses and the total extent of the property is around 5 cents. There is no dispute with regard to the title or the death of the original owner, namely, Mr.P.Vincent Sigamani. It is the contention of petitioners that even though the guarantor, who has offered his property as security, died in February, 2021, no notice was served at any point of time to the legal heirs and the legal heirs of guarantor were never impleaded in anyone of the proceedings. Later when the petitioners came to know about the sale in favour of the auction purchaser, who is the fourth respondent herein, filed a writ petition in W.P.No.16400 of 2023 for issuance of a writ of declaration to declare the sale of property measuring an extent of 1676 sq.ft., in D.No.5/9, Senkothaiamman Koil Street, Rajakilpakkam, Chennai as illegal and to permit the petitioners to redeem the mortgage executed by Mr.Vincent Sigamani in favour of the bank. The specific contention raised by the petitioners in the previous writ petition is that the proceeding initiated against a dead person is invalid. However, this Court moulded the relief, while disposing of the writ petition on 25.05.2023, and passed the following order:-

> "7. We, therefore, mould the relief that has been sought for by the petitioners in the following terms:
>
> (i) The return by the Debts Recovery Tribunal dated 27.7.2022 that the SA is barred by time is not a proper endorsement, since, on that day, Vincent Sigamani was no more and one of the legal heirs were put on notice of the sale. They came to know of the sale only on 07.09.2022 and even before that they have approached the Debts Recovery Tribunal by way of an application on 25.7.2022. Therefore, the return of the papers by the Debts Recovery Tribunal stating that the appeal is barred by time is not supported by facts or law. Therefore, the Debts Recovery Tribunal-III, Chennai is directed to take the appeal on file and not reject it on the ground that it is

barred by time; and

(ii) The petitioners are granted twelve weeks' time to deposit the outstanding amount of Rs.42,00,000/- on or before 17.8.2023. The first instalment shall be paid on or before 28.7.2023 and the remaining amount on or before 17.8.2023. Till then, the Bank is restrained from taking any further action pursuant to the alleged sale held in the name of the dead person. In default of payment of the aforesaid amount, the Bank shall proceed in accordance with law."

It is to be noted that the order passed by this Court in the above writ petition is not challenged either by the Bank or by the auction purchaser, even though the auction purchaser is shown as the fourth respondent in the proceedings. Though the learned counsel for petitioner in W.P.No.26476 of 2023 submitted that the finding of this Court earlier in the order that the legal heirs of Mr.Vincent Sigamani came to know about the sale only on 07.09.2022, this has no significance, as the effect of legal consequence that follows from the order dated 25.05.2023 in W.P.No.16400 of 2023 will not change merely because the petitioners in W.P.No.29040 of 2023 came to know about the sale little earlier.

4. When it is admitted before this Court that the sale was proceeded without notice to the guarantor in time before the sale notice was published, the sale is void. The fact that the petitioners have deposited the entire amount is not in issue. Even though there is a delay of two days in complying with the first instalment, the reason for such delay was also explained to the satisfaction of this Court. This Court has rightly ignored the sale in the earlier writ petition, by recording the fact about the death of guarantor/mortgagor.

5. It is surprising to note that the petitioner in W.P.No.26476 of 2023 is the fourth respondent in W.P.No.16400 of 2023. Without challenging the earlier order passed by this Court invalidating the sale in favour of the auction purchaser, the auction purchaser has filed W.P.No.26476 of 2023 for issuing a mandamus directing the Bank to handover vacant possession of the property purchased by the petitioner through public e-auction dated 30.03.2022 and to issue the sale certificate. After making an attempt to

convince this Court that the order passed by this Court is without issuing notice to the petitioner in W.P.No.26476 of 2023 and that therefore the said order cannot be relied upon to non-suit him, the learned counsel contended that the petitioners in W.P.No.29040 of 2023 are aware of the proceedings and that therefore they are estopped from questioning the same. All the facts relating to the loan account and the default committed by the principal borrower cannot be a reason to reject the contentions of the guarantor on the procedural irregularities in relation to the sale of the property belonging to them against a dead person. The first respondent Bank is a party to the proceedings in W.P.No.16400 of 2023. In such circumstances, the auction purchaser ought to have filed an appeal as against the order in W.P.No.16400 of 2023, if she had a grievance. Without challenging the order, it is not possible for this Court to examine the validity of the order on merits in a collateral proceeding. Even the successful bidder has not disputed the relevant dates and the fact that the guarantor/mortgagor died in January, 2021 and the legal heirs are not impleaded, when the statute prescribes mandatory notice to the mortgagor before proceeding with the sale. It is also to be noted that if the sale, for any reason, is postponed, the mortgagor is entitled to a notice every time the property is brought to sale by publication. In *Mathew Varghese v. M.Amrithakumar, (2014) 5 SCC 510,* the Hon'ble Supreme Court has held that the paramount objective is to provide sufficient time and opportunity to the borrower to take all efforts to safeguard his right of ownership to tender the dues or to ensure the maximum price for the secured asset and no one is allowed to exploit the vulnerable situation in which the borrower is placed. In view of the settled principles of law, this Court is unable to entertain the writ petition in W.P.No.26476 of 2023.

6. The learned counsel appearing for the auction purchaser submitted that with lot of difficulties, the auction purchaser participated in the e-auction and he referred to the private loans obtained by the auction purchaser to make the payment.

7. The learned counsel appearing for the Bank also relied upon the judgment of the Hon'ble Supreme Court in *Celir LLP v. Bafna Motors (Mumbai) Pvt.Ltd., and others, 2023 SCC OnLIne SC 1209*. In the said

judgment, the Hon'ble Supreme Court, in a proceeding at the instance of the mortgagor, has held that the mortgagor loses the right of redemption unless the amount of dues payable to the secured creditor together with all costs, charges and expenses incurred by them is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations/tenders from the public.

8. This Court is of the view that the said judgment of the Hon'ble Supreme Court referring to the statutory provision of Section 13(8) may not be applicable to cases of this nature where the sale has been held to be void. When the petitioners in W.P.No.29040 of 2023 have repaid the outstanding amount as directed by this Court, they are entitled to redeem the property, as the sale held in favour of the petitioner in W.P.No.26476 of 2023 is void for non-compliance of the legal formalities. Therefore, W.P.No.29040 of 2023 is allowed and the first respondent Bank is directed to return all the original documents related to the secured asset and handover possession of the secured asset to the petitioners by cancelling the memorandum of title deed dated 16.10.2015, within a period of twelve weeks from the date of receipt

of a copy of this order. For all the reasons aforesaid, W.P.No.26476 of 2023 is dismissed. No order as to costs.

Index : yes/no (S.S.S.R.,J.) (N.S.,J.)
Neutral citation : yes/no 21.06.2024

ss

To

1. The Authorised Officer
Union Bank of India
Formerly Andhra Bank
Kodambakkam Branch
No.4/9, 4th Main Road
United India Colony
Kodambakkam
Chennai 600 024

S.S.SUNDAR,J.

AND

N.SENTHILKUMAR,J.

ss

W.P.Nos.29040 & 26476 of 2023

21.06.2024