



W.P(MD)No.5625 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No.5625 of 2021

S.Vimala

: Petitioner

Vs.

- 1.The Regional Manager,
Tamil Nadu Mercantile Bank,
3A/16, First Floor,
South Bye-pass Road,
Vannarpettai, Tirunelveli 627 003.
- 2.The Authorized Officer,
Tirunelveli Region,
Tamil Nadu Mercantile Bank,
3A/16, First Floor, South Bye-pass Road,
Vannarpettai, Tirunelveli 627 003.
- 3.The Branch Manager,
Tamil Nadu Mercantile Bank,
Vengadampatti Branch,
4/23 B, Pavoorchatram Road,
Mylappapuram, Vengadampatti – 627 415,
Tirunelveli.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of certiorarified Mandamus, to call for the records relating to the impugned order in



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Ref.No.TIN.R.Legal.Cor.11/2020-21, dated 19.12.2020 of the second respondent bank and to quash the same, consequently, directing the respondent Bank paying to refund of Rs.2,38,750/- being 25% of the bid amount to the petitioner.

For Petitioner : Mr.J/David Ganesan

For Respondents : Mr.A.R.M.Ramesh, for R1 to R3.

ORDER

The Writ Petition has been filed seeking a Writ of certiorarified Mandamus, to call for the records relating to the impugned order in Ref.No.TIN.R.Legal.Cor.11/2020-21, dated 19.12.2020 of the second respondent bank and to quash the same and consequently, directing the respondent Bank to refund of Rs.2,38,750/- being 25% of the bid amount to the petitioner.

2. It is evident from the records that the petitioner has participated in the auction sale held on 20.12.2019 by paying EMD amount of Rs.94,950/- and in that auction, the petitioner was declared as successful bidder for a bid amount of Rs.9,55,000/-; that the petitioner has then remitted a sum of Rs.2,38,750/- being 25% of the bid amount and the petitioner was directed to pay the balance amount of Rs.7,16,250/- being



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75% of the amount within fifteen days from 20.12.2019; that since the petitioner has not complied with the direction, time was extended till 30.04.2020, but the petitioner has paid a sum of Rs.4,98,750/- which includes the payment already made; that since the petitioner has not paid the amount within the extended time, the second respondent Bank has passed the impugned order rejecting the request for refund relying on the Rule 9(4) and (5) of Security Interest Rule.

3. It is also not in dispute that the petitioner has again participated in the auction sale scheduled on 02.11.2020 and he was again declared as successful bidder and that after payment of entire consideration, sale certificate came to be issued on 19.12.2020. Thereafter, the petitioner by alleging that the Reserve Bank of India has granted Moratorium on the payment of installments for the Covid-19 period from 01.03.2020 to 31.08.2020 and that the petitioner could not pay the amount due to loss in his business and due to the Covid lockdown, filed the present writ petition seeking orders to quash the order, dated 19.12.2020 rejecting the requisition for refund.



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4. As rightly pointed out by the learned counsel for the respondents, the plea of Moratorium cannot be applied to the payment of balance sale consideration and is only applicable to the loan payments. Moreover, the learned counsel would further submit that as per Rule 9(4) and (5) of Security Interest Rule., the Bank has rightly forfeited 25% of the amount and as such the impugned order rejecting the petitioner's request is legally sustainable.

5. At this juncture, the learned counsel for the petitioner would submit that since the writ petitioner was doing Beedi work and suffered huge loss, his representation for refund of 25 % of the amount already paid, may be considered and the matter may be referred to mediation.

6. But the learned counsel for the respondents would submit that since the Bank has rightly forfeited the amount and taking note of the submission made by the learned counsel for the petitioner, the petitioner may be directed to submit another representation and the Bank Authorities may be directed to consider the same.



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7. In view of the above, the Writ Petition is dismissed. The petitioner is at liberty to give fresh representation to the third respondent and on receipt of such representation, the third respondent is directed to consider the same and pass orders in accordance with law. No costs.

23.02.2024

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



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K.MURALI SHANKAR, J

das

Order made in
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Dated : 23.02.2024