BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P(MD)No.16929 of 2024
and
W.M.P(MD)No.14590 of 2024

B.Pradish Kumar ... Petitioner

vs.

1.The Regional Manager,
Canara Bank,
Regional Office,
23, Palani Road,
New Agraharam,
Govindapuram,
Dindigul – 624 001.

2.The Branch Manager/Authorized Officer,
Canara Bank,
West Car Street Branch,
Dindigul. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents either to permit the petitioner to participate in the e-auction sale scheduled to be conducted on 24.07.2024 by considering the petitioners father late.T.V.Balakrishnan who was the successful bidder in the earlier auction sale conducted on 25.06.2019 by depositing a sum of Rs.4,25,000/- or to refund the same to the petitioner by considering the petitioner's representation dated 14.05.2024 within the time stipulated by this Court.

For Petitioner : Mr.P.Manikandan

For Respondents : Mr.P.Mathan Alexander

ORDER

(Order of the Court was made by G.ARUL MURUGAN, J.)

This Writ Petition is filed by the son of a successful bidder in an earlier auction conducted by the respondent Bank in seeking to allow him to participate in the E-auction sale to be conducted on 24.07.2024 or in the alternative, to refund the amount paid by his father in the earlier auction by considering his representation, dated 14.05.2024.

2. It is the case of the petitioner that one A.Krishnamoorthy, who had borrowed loan from the respondent Bank defaulted in repayment of the dues to the Bank and the account having been classified as a 'Non-Performing Asset', proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short hereinafter referred to as “the SARFAESI Act”) was initiated

by the Bank by issuing demand notice under Section 13(2) of the SARFAESI Act, followed by possession notice under Section 13(4) of the SARFAESI Act. Pursuant to which, the Bank had earlier issued a sale notice in respect of the mortgaged property and an auction sale was conducted on 25.06.2019. The petitioner's father late.T.V.Balakrishnan participated in the auction and he was declared as a successful bidder for a sum of Rs.17,00,000/-. As per the terms of the auction, the petitioner's father had deposited a sum of Rs.4,25,000/- on the same day and the respondent Bank had issued an interim certificate acknowledging the payment of this Rs.4,25,000/-.

3. It is his further case that since the second respondent had orally informed that his father could make the balance payment of Rs.12,75,000/- during the time of handing over the possession of the property, since there was a tenant in the property and he refused to vacate from the premises, his father has not made the balance payment waiting for the instructions from the Bank, but unfortunately, he died on 21.04.2022. Only later after coming to know about the same, the petitioner also understand that the case filed by the tenant as against the Bank was dismissed and therefore, he approached the respondent Bank and expressed his willingness to make the balance payment of Rs.12,75,000/- and requested the Bank to register the property in his favour. In this regard,

he has also made a representation to the respondents on 14.05.2024 and he has been waiting for the response from the Bank. While so, the respondent Bank had issued an E-auction sale notice, dated 12.06.2024 by scheduling the auction to be conducted on 24.07.2024. Since no reply was forthcoming from the Bank, the petitioner had preferred the above Writ Petition.

4. Mr.P.Manikandan, learned counsel appearing for the petitioner reiterated the averments made in the affidavit and submitted that the petitioner's father had participated in the auction earlier conducted by the Bank as early as in the year 2019 and he had made a payment of Rs.4,25,000/- and only on the instructions of the respondent Bank, he was waiting to make the balance payment, but after the case filed by the tenant was dismissed, the respondent Bank, inspite of the representation submitted by the petitioner for registering the property by collecting the balance sale amount, had proceeded with the issuance of fresh sale notice, which is arbitrary and illegal.

5. The learned counsel further contended that in fact the petitioner also, after the issuance of the sale notice, had requested the Bank to allow the petitioner to participate in the auction by considering and

deducting the payment already made by his father or in the alternative to atleast refund the money paid by him. The Bank, ignoring the representation, are proceeding to conduct the auction sale, whereby the petitioner will lose the amount paid towards the purchaser of the property, which is erroneous, he contended and sought for interference of this Court.

6. Per contra, Mr.P.Mathan Alexander, learned standing counsel, taking notice for the respondent Bank, submitted that the relief sought for by the petitioner no longer survives, as the auction sale scheduled on 24.07.2024 is already over and in fact, the property has been sold to the successful bidder in the auction. The learned standing counsel also contended that when in the earlier auction the petitioner's father had paid a sum of Rs.4,25,000/- and defaulted in making the balance payment which has been forfeited, the petitioner cannot at this length of time after a period of nearly 5 years, renew the lost right by claiming refund of the amount and therefore, sought for dismissal of the Writ Petition.

7. Heard the rival submissions and perused the materials available on record.

8. In respect of the loan availed by one A.Krishnamoorthy from the respondent Bank by mortgaging his property, there had been default in repayment of dues and due to which, the respondent Bank after classifying the account as 'Non-Performing Asset' had initiated proceedings under the SARFAESI Act and the possession notice under Section 13(4) of the SARFAESI Act was issued by taking possession of the assets. Pursuant to which, a sale notice has been issued by fixing the auction sale on 25.06.2019. The petitioner's father late T.V.Balakrishnan had participated in the auction sale and he was declared as the successful bidder for a sum of Rs.17,00,000/- and he had also paid a sum of Rs.4,25,000/- on the same day. On the payment of the said amount, an interim certificate had been issued by the respondent Bank on 25.06.2019, by confirming the auction. As per the sale, the petitioner's father ought to have paid the balance sum of Rs.12,75,000/- within 15 days ie., on or before 10.07.2019, failing which, the sale conducted shall stand cancelled and the amount of Rs.4,25,000/- deposited shall stand forfeited without further notice. The relevant portion of the interim certificate issued by the Bank is extracted hereunder for easy reference:

> *'This is to certify that Sri TV Balakrishnan, S/o Velraman, No.90 B, Spencer Compound, Dindigul 624 001, PAN - AETB3262N, Mobile No. 9043442373, has become successful bidder by quoting Rs.17,00,000/- (Rupees*

Seventeen Lakhs only) in the sale by inviting Tenders and E auction conducted in respect of the Secured Assets belonging to Mr. A Krishnamoorthy, more fully described below, on 25.06.2019 and he has deposited EMD amount of Rs.1.70,000/- being 10% of the reserve price on 24.06.2019 and he has paid Rs.2,55,000/- being the 15% of the bid amount on 25.06.2019. He shall deposit the balance amount of Rs.12,75,000/- within 15 days i.e., on or before 10.07.2019 failing which the sale conducted shall stand cancelled and the amount of Rs.4,25,000/- deposited shall stand forfeited without further notice.

9. The petitioner's father failed to make the balance payment of Rs.12,75,000/- as per the sale and he had also not taken any further steps in this regard. The terms of the sale and the certificate referred to above make it clear that the amount paid by the petitioner's father on the failure of the balance payment shall automatically stand forfeited without further notice. The petitioner's father had expired on 21.04.2022 and only after this, the petitioner had come up with the claim that only based on the oral instructions of the Bank, the balance payment has not been made and that now he must be allowed to participate in the auction to be conducted on 24.07.2024 or in the alternative, the amount paid by his father has to be refunded.

10. In respect of the first portion of the prayer is concerned, as the auction date fixed on 24.07.2024 is already over, the relief claimed has become infructuous and further it has been brought to our notice that the auction has been conducted and the property has been sold in favour of the successful bidder.

11. Insofar as the alternative prayer of the petitioner for a refund of the amount paid by his father is concerned, the claim of the petitioner cannot be entertained as the sum of Rs.4,25,000/- paid by the petitioner's father, stood forfeited even as early as on 10.07.2019, as the petitioner's father failed to make the payment of the balance amount of Rs.12,75,000/- as per the terms of the sale.

12.Rule 9 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short hereinafter referred to as “the SARFAESI Rules”) deals with respect to the time of sale, issue of sale certificate and delivery of possession etc and particularly, as per Rules 9(4) and 9(5) of the SARFAESI Rules, the balance amount of purchase price payable by the purchaser shall be paid on or before 15th day of confirmation of sale of the immovable property or within such extended period which in any case cannot exceed three months. In default of the payment, 25% of the deposit already made shall be forfeited by the Bank/secured creditor and the property shall be resold. Rules 9(4) and 9(5) of the SARFAESI Rules is extracted hereunder for easy reference:

> *'9.Time of sale, issue of sale certificate and delivery of possession, etc._*
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> *...........*
>
> *(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorized officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period [as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months] [Substituted by Notification No. G.S.R. 1046 (E), dated 3.11.2016 (w.e.f. 04.11.2016)].*
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> *(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit [to the secured creditor] [Inserted by Notification No.G.S.R.1046 (E), dated 3.11.2016 (w.e.f. 04.11.2016)] all claim to the property or to any part of the sum for which it may be subsequently sold.'*

13.At this juncture, it is also useful to refer to the decision of the Hon'ble Supreme in ***Authorised Officer, State Bank of India Vs. C.Natarajan and another*** reported in ***(2024) 2 SCC 637***, wherein the Hon'ble Supreme Court held that the High Court under Article 226 of the Constitution of India cannot entertain the claim of the purchaser for a refund of the amount that stood forfeited in view of Rule 9(5) of the SARFAESI Rules. The relevant portion is extracted hereunder:

> *'49.The Bank, as a secured creditor, is entitled in law to enforce the security interest and in the process to initiate all such steps and take all such measures for protection of public interest by recovering the public money, lent to a borrower and who has squandered it, in a manner authorized by law. The contesting respondent participated in the auction well and truly aware of the risk of having 25% of the sale price forfeited in case of any default or failure on his part to make payment of the balance amount of the sale price. Question of the Bank being enriched by a forfeiture, which is in the nature of a statutory penalty, does not and cannot therefore arise in the circumstances.*
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> *50.The High Court, in our considered opinion, failed to bear in mind the settled principle of law that the power of judicial review of a writ court will*

not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes, unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. On the pleadings, this was not one such case where the High Court should have interfered.

51.The question under consideration can also be addressed from a different perspective. In the present case, the Authorized Officer had adhered to the statutory rules. If by such adherence any amount is required to be forfeited as a consequence, the same cannot be scrutinized wearing the glasses of misplaced sympathy. Law is well settled that a result flowing from a statutory provision is never an evil and that a court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. The statute must, of course, be given effect to whether a court likes the result or not. This is the statement of law in the decision of this Court in Martin Burn Ltd vs The Corporation of Calcutta reported in 1965 SCC Online SC 20.

52. There being no enrichment of the Bank by reason of the impugned forfeiture, based on our reading of the aforesaid decisions, we answer the second question by holding that the High Court was not justified in exercising writ jurisdiction and directing a refund of 25% of the sale price.'

14.Further, the Hon'ble Supreme Court in ***the Authorised Officer, Central Bank of India Vs. Shanmugavelu*** reported in ***[2024] 2 S.C.R.12*** has held that even in case of the property fetching a higher sale value in the subsequent auction, the purchaser who failed to make the balance sale price and the initial deposit made by him which would be forfeited under Rule 9(5) of the SARFAESI Rules cannot be directed to be refunded as that would not amount to unjust enrichment by the Bank. The relevant portion is extracted hereunder:

> *'111. The consequence of forfeiture of 25% of the deposit under Rule 9(5) of the SARFAESI Rules is a legal consequence that has been statutorily provided in the event of default in payment of the balance amount. The consequence envisaged under Rule 9(5) follows irrespective of whether a subsequent sale takes place at a higher price or not, and this forfeiture is not subject to any recovery already made or to the extent of the debt owed. In such cases, no extent of equity can either substitute or dilute the statutory consequence of forfeiture of 25% of deposit under Rule 9(5) of the SARFAESI Rules.*
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> *112. This Court in* ***National Spot Exchange Ltd. v. Anil Kohli, Resolution Professional for Dunar Foods Ltd.*** *reported in* ***(2022) 11 SCC 761*** *after referring to a catena of its other judgments, had held that where the law is clear the consequence thereof must follow. The High*

Court has no option but to implement the law. The relevant observations made in it are being reproduced below: -

> *"15.1. In **Mishri Lal [BSNL v. Mishri Lal, (2011) 14 SCC 739 : (2014) 1 SCC (L&S) 387]**, it is observed that the law prevails over equity if there is a conflict. It is observed further that equity can only supplement the law and not supplant it.*
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> *15.2. In **Raghunath Rai Bareja [Raghunath Rai Bareja v. Punjab National Bank, (2007) 2 SCC 230]**, in paras 30 to 37, this Court observed and held as under : (SCC pp. 242-43)*

*"30. Thus, in **Madamanchi Ramappa v. Muthaluru Bojjappa [AIR 1963 SC 1633]** (vide para 12) this Court observed: (AIR p. 1637)*

> *'12..... [What is administered in Courts is justice according to law, and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law.'*

*31. In **Council for Indian School Certificate Examination v. Isha Mittal [(2000) 7 SCC 521]** (vide para 4) this Court observed: (SCC p. 522)*

> *'4. Considerations of equity cannot prevail and do not permit a High Court to pass an order contrary to the law.'*

*32. Similarly, in **P.M. Latha v. State of Kerala [(2003) 3 SCC 541 : 2003 SCC (L&S) 339]** (vide para 13) this Court observed: (SCC p. 546)*

> *'13. Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot override written or settled law.'*

*33. In **Laxminarayan R. Bhattad v. State of Maharashtra [(2003) 5 SCC 413]** (vide para 73) this Court observed: (SCC p. 436)*

> *'73. It is now well settled that when there is a conflict between law and equity the former shall prevail.'*

*34. Similarly, in **Nasiruddin v. Sita Ram Agarwal [(2003) 2 SCC 577]** (vide para 35) this Court observed: (SCC p. 588)*

> *'35. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom.'*

*35. Similarly, in **E. Palanisamy v. Palanisamy [(2003) 1 SCC 123]** (vide para 5) this Court observed: (SCC p. 127)*

> *'5. Equitable considerations have no place where the statute contained express provisions.'*

*36. In **India House v. Kishan N. Lalwani [(2003) 9 SCC 393]** (vide para 7) this Court held that: (SCC p. 398)*

> *'7....... The period of limitation statutorily prescribed has to be strictly adhered to and cannot be relaxed or departed from for equitable considerations.'"*

113. Thus, the High Court erred in law by holding that forfeiture of the entire deposit under Rule 9 sub-rule (5) of the SARFAESI Rules by the appellant bank after having already recovered its dues from the subsequent sale amounts to unjust enrichment.

....

120. The e-auction notice inviting bids along with the correspondence between the appellant bank and the respondent are unambiguous and clearly spelt out the consequences of not paying the balance amount within the specified period.

121. Thus, what could be said is that the respondent being aware of his financial capacity, willingly participated in the e-auction and offered his bid fully knowing the reserve price of the Secured Asset and the consequences of its failure in depositing the balance amount.'

15. From the above Rules and the decisions referred to above, it is clear that the purchaser has to comply with the payment of the balance sale price within the time contemplated under Rule ie., 15 days from the date of confirmation or within the period as extended by the secured creditor Bank, which in any case cannot be beyond 90 days and in cases where the purchaser has defaulted in payment, the initial deposit of 25% made shall stand forfeited.

16. In the instant case, though the petitioner's father had participated in the auction and had been declared as a successful bidder in the sale conducted on 25.06.2019 and he had deposited a sum of Rs.4,25,000/- being 25% of the amount out of the total sale value of Rs.17,00,000/- and an interim certificate was also issued in favour of the petitioner's father, both as per the Rule and also the interim certificate issued, it had been made clear that the petitioner's father had to make the deposit of the balance amount of Rs.12,75,000/- within 15 days ie., on or before 10.07.2019, failing which, the sale conducted shall stand cancelled and the amount deposited by him shall stand forfeited without further notice. When the petitioner's father failed to make the balance payment, the sum of Rs.4,25,000/- paid by him had already stood forfeited even as early as on 10.07.2019.

17. Now after a period of nearly five years, the petitioner as an afterthought, that too, after the death of his father, who had not taken any steps in respect of the purchase made by him, is making an unsuccessful attempt to interfere in the auction sale conducted by the Bank for the purpose of recovering the money, which stood forfeited long ago.

18. In our considered opinion, the claim made by the petitioner cannot be legally sustained in view of the above discussions and in view of the same, the Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

[R.S.K.,J.] [G.A.M.,J.]
25.07.2024

NCC : Yes / No
Index : Yes / No
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To

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and
G.ARUL MURUGAN,J.

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