



W.P.(MD) No.26574 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.02.2024

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

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Vivekanandan

... Petitioner

-VS-

The Authorized Officer,
Canara Bank,
Regional Office,
1st Floor,
Muthaiah Towers,
Williams Road,
Trichy – 620 001.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondent herein to forthwith refund the EMD amount of Rs.19,40,000/- together with interest thereon paid by petitioner in favour of the Respondent Bank in connection with the E auction dated 25.09.2023.

For Petitioner : Mr.B.Jameelarasu



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For Respondent : Mr.C.Deepak
Standing Counsel

ORDER

[Order of the Court was made by D.KRISHNAKUMAR, J.]

The Writ Petition has been filed seeking to issue a Writ of Mandamus, to direct the respondent herein to forthwith refund the EMD amount of Rs.19,40,000/- together with interest thereon paid by the petitioner in favour of the Respondent Bank in connection with the E auction dated 25.09.2023.

2. By consent of both sides, the Writ Petition is taken up for final disposal at the time of admission itself.

3. According to the petitioner, pursuant to the sale notice issued by the respondent bank, the petitioner participated in the E-Auction held on 25.09.2023 and as per the terms and conditions of the sale, the petitioner has paid a sum of Rs.19,40,000/-. Total sale consideration of the property in question has been fixed at Rs.3,75,00,000/-. A communication dated 26.09.2023, was sent to him through e-mail by the respondent bank stating that no case with respect to the



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property in question is pending before the Courts and asked the petitioner to comply with the conditions and pay 15% of the amount i.e., Rs.74,35,000/- on the next day and the said amount has not been paid by the petitioner for the reason that he has received a legal notice on behalf of one V.Sasikumar, the power agent of the legal heirs of the borrower Manickam, that S.A.No.228 of 2020 is still pending. Further, it is stated in the legal notice that in S.A.No.298 of 2020, I.A.No.1244 of 2020 was also filed on the ground that the bank did not initiate SARFAESI proceedings afresh by issuing demand notice and possession notice on them before issuance of sale notice and in the SARFAESI Appeal originally stay was granted not to confirm the sale. Due to the continuance of the said interim stay, the bank was not in a position to complete the sale process and therefore, on account of pending legal proceedings, the bank has decided to drop the sale proceedings and accordingly, cancelled the sale and the sale amount was returned to the then auction purchasers. Even now, the power agent of the legal heirs of the said Manickam are in possession of the property in question. Therefore, he sent a legal notice dated 29.09.2023, requesting the respondent bank to refund the entire EMD amount. However, no order has been passed on the said notice. Hence, the Writ Petition.



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4. Learned Standing Counsel for the respondent stated that though the petitioner is the successful bidder in the auction sale, he has not complied with the terms and conditions for payment of the sale amount to the respondent bank. Thereafter, sale notice was issued by the respondent bank on 03.10.2023 and the sale was conducted on 26.10.2023 and the said property was sold for a sum of Rs.1,94,10,000/-. According to the learned Standing Counsel for the respondent bank, due to the non-compliance of the condition to pay 15% of the amount i.e., Rs.74,35,000/- on 27.09.2023, forfeiture order has been passed, which has not been challenged. In such circumstances, the Writ Petition is liable to be dismissed.

5. We have considered the rival submissions made by the parties and perused the materials produced.

6. The point for consideration in this Writ Petition is whether a mandamus can be issued for the refund of the EMD amount of Rs.19,40,000/-, which was forfeited by the respondent for non-compliance of the terms and conditions of the auction sale.



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7. The petitioner participated in the auction held on 25.09.2023 and he was also declared as the successful bidder for the purchase of the property for a sum of Rs.3,75,00,000/- and he has paid the EMD amount of Rs.19,40,000/-. However, the petitioner failed to pay 15% of the sale consideration on 27.09.2023 as per the conditions of sale on the ground that he has received a legal notice from one Sasikumar stating that he is in possession and enjoyment of the property.

8. We are unable to accept the said contention of the petitioner because the petitioner has participated in the auction, accepting the condition to purchase the property in its “as is where is” condition. Having purchased the property, knowing fully well the above terms and conditions, the petitioner cannot raise it as a ground for not complying with the conditions. Even assuming that due to some *bonafide* reason he is unable to comply with the conditions, that should be explained before this Court. Further, the petitioner has not challenged the order passed by the respondent bank, forfeiting the EMD amount. Therefore, in the light of the above, we are of the view that the relief sought for by the petitioner cannot be granted by this Court and the Writ Petition is liable to be dismissed.



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9. Accordingly, the Writ Petition is dismissed. However, it is open to the petitioner to workout his remedy challenging the forfeiture order, if it is permissible under law. No costs.

[D.K.K., J.] [R.V., J.]
19.02.2024

Index : Yes / No
Internet : Yes / No
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