BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	**:**	**28.04.2025**
PRONOUNCED ON	**:**	**13.08.2025**

CORAM:

THE HONOURABLE MRS. JUSTICE J. NISHA BANU

and

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.4271 of 2025

Abuthahir Sait ... Petitioner

Vs.

1.The Chief Manager,
Represented by its Authorized Officer,
State Bank of India,
Ayyambalayam AD Branch,
Marudanthi Road, Ayyambalayam,
Dindigul – 624 204.

2.M.Chinnasamy ... Respondents

(R2 is impleaded, vide Court order, dated 03.04.2025, in W.M.P.(MD)No.6286 of 2025 in W.P.(MD)No. 4271 of 2025)

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Mandamus***, to direct the 1st respondent to refund the entire auction bid amount of Rs.28,60,000/- paid by the petitioner in respect of the above mentioned property along with 12% rate of interest to the petitioner for the period of 30.08.2023 until the date on which the amount is refunded by considering the petitioner's representation, dated 31.12.2024.

For Petitioner	: Mr.P.Suresh
For R1	: Mr.S.Suresh Standing Counsel
For R2	: Mr.AN.Ramanathan

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<u>O R D E R</u>

<u>J.NISHA BANU, J.</u>

This Writ Petition is filed to issue a Writ of Mandamus, to direct the 1st respondent to refund the entire auction bid amount of Rs.28,60,000/- paid by the petitioner in respect of the above mentioned property along with 12% rate of interest to the petitioner for the period of 30.08.2023 until the date on which the amount is refunded by considering the petitioner's representation, dated 31.12.2024.

2. The facts that are necessary for the disposal of this writ petition is as follows:-

2.1 The 1st respondent Bank has made an advertisement in the Daily News Paper, Dindigul edition to conduct an auction for an immovable property which originally belongs to 2nd respondent who is the proprietor of M/s Sumathi Agro Farm, Land and Building measuring an extent of 1212 ½ sq.ft comprised in Survey No.494 at Pallapatty village, Dindigul District, by way of an auction sale notice dated 25.07.2023.

2.2 The petitioner herein, being the successful bidder in the said auction conducted by the first respondent Bank, was not conveyed with the subject property by the 1st respondent Bank, even after the Sale Certificate was issued in his favour as early as on 27.09.2023 itself.

2.3. Seeking refund of the entire auction bid amount of Rs.28,60,000/- paid by him in respect of the above mentioned property along with 12% rate of interest to the petitioner for the period commencing from 30.08.2023 until the date on which the total amount is refunded, the petitioner made a representation dated 31.12.2024. The petitioner seeks for a direction to the 1st respondent Bank, to consider the said representation and for refund of the entire auction bid amount. Hence, filed the present writ petition.

3. Mr.P.Suresh, learned counsel appearing for the petitioner submitted that the land and building admeasuring 1212 ½ square feet, comprised in S.No. 494 at Pallapatty Village, Dindigul District, belongs to 2nd respondent's proprietoryship concern viz., M/s. Sumathi Agro Farm. The 1st respondent bank has put up an advertisement denoting the above said property for auction sale with terms and conditions that (i) the bidders should pay Earnest Money Deposit (EMD) of Rs.2,80,000/- on the date of auction (ii) the sale certificate for the auction mentioned property will be issued on or before 27.09.2023. Based on the 1st respondent bank's advertisement, the petitioner participated in the auction proceedings conducted on 30.08.2023. Being the successful bidder for the bid amount of Rs.28,60,000/-, the petitioner has paid an EMD of Rs.2,80,000/- on the date of auction; Rs.4,35,000/- on 31.08.2023 and the final payment of Rs. 21,18,000/- was made within the stipulated time frame fixed by the 1st respondent Bank and the 1st respondent Bank has also issued Sale confirmation letter on 02.09.2023.

4. Subsequently, the 1st respondent Bank has issued the Sale certificate in favour of the petitioner on 27.09.2023 and also promised to hand over the possession of the subject property in a week's time.

5. The learned counsel for the petitioner would further submit that the petitioner had availed loan of Rs.25,00,000/- from HBD Financial Services Limited by depositing the original title deed of the subject property and paid the bid amount to the 1st respondent Bank using the loan amount.

6. According to the learned counsel for the petitioner, on 18.07.2024, the second respondent herein/ M/s.Sumathi Agro Farm, by suppressing the completion of auction sale, has approached the Debt Recovery Tribunal (DRT), Madurai, by way of filing I.A.No.2506/2024 in S.A.No.455 of 2024 in which a stay was granted in favour of M/s.Sumathi Agro Farm.

7. It is the further submission of the learned counsel for the petitioner that, even though the petitioner has paid the entire bid amount to the 1st respondent Bank, the subject property was not handed over to the petitioner even after a lapse of more than 18 months. Several representations were made to the 1st

respondent Bank seeking to handover the title of the property to the petitioner, but the 1st respondent Bank has dragged the same without giving proper explanations to the petitioner.

8. The main grievance of the petitioner is that the 1st respondent Bank has colluded with the second respondent/ M/s.Sumathi Agro Farm and failed to fulfil the statutory obligation of handing over the vacant possession of the subject auction property, even after issuance of Sale certificate to the petitioner. Moreover, when the second respondent has obtained an order of stay before the DRT, Madurai, the 1st respondent Bank failed to take effective steps to vacate the stay order. Aggrieved against the same, the petitioner made a detailed representation on 31.12.2024 to the 1st respondent Bank expressing his difficulty in payment of monthly instalment for the loan availed by him from HDB Financial Services for the purchase of the subject property in the auction sale, which has not yet been handed over to the petitioner till date. Hence, the learned counsel for the petitioner seeks for a direction to the 1st respondent Bank to refund the auction amount of Rs.28,60,000/- along with 12% interest to the petitioner .

9. Mr.S.Suresh, learned standing counsel appearing for the first respondent Bank filed a counter affidavit before this Court. Perusal of the same reveals that the second respondent herein is the proprietor of M/s.Sumathi Agro Farm and engaged in poultry farm. They approached 1st respondent Bank for Kisan Credit Card service. The 1st respondent Bank credited Rs.90,00,000/- to the 2nd respondent by execution of necessary documents. The 2nd respondent deposited their title deeds of their property. The 2nd respondent defaulted in payment of loan amount to the 1st respondent Bank. The account became Non Performing Asset (NPA) on 22.10.2015. Demand notice for recovery of loan amount was issued by the bank to the 2nd respondent on 07.03.2016. Possession notice was issued on 20.05.2016. Sale notice was subsequently issued by the Bank on 27.09.2023.

10. The auction sale notice, dated 25.07.2023 published by the 1st respondent Bank was challenged by the second respondent vide S.A.No.455 of 2024 before the DRT, Madurai. The Debts Recovery Tribunal, Madurai, granted opportunity to the 2nd respondent to pay the entire amount of Rs.1,50,00,000/- in two installments ie., Rs.1,12,00,000/- on or before 22.09.2023 and the balance Rs. 38,00,000/- on or before 23.10.2023 and the said conditional order was given with default clause.

11. The 2nd respondent-debtor failed to comply with the conditional order. Thereby, the 1st respondent Bank confirmed the sale to the petitioner on 02.09.2023 by way of issuance of Sale Confirmation letter.

12. It is further stated in the counter affidavit that the registration of the sale certificate is at the option of the auction purchaser as it entailed expenses towards stamp duty and registration charges. The 1st respondent Bank has filed an application before the Chief Judicial Magistrate, Dindigul in Cr.M.P.No.4420 of 2024 under Section 14 of the SARFAESI Act for taking physical possession of the property and the same was ordered in favour of the 1st respondent Bank on 01.04.2024.

13. The second respondent has filed S.A.No.455 of 2024 challenging the Section 14 of the SARFAESI order before the DRT, Madurai. The Debts Recovery Tribunal has granted Ad-interim stay order on 18.07.2024 till 18.10.2024 with respect to the subject mentioned properties on condition to pay a sum of Rs.26,58,888/- on or before 16.08.2024 as 1st instalment and further a sum of Rs.26,58,888/- on or before 18.09.2024 as 2nd instalment and another sum of

Rs.26,58,888/- as 3rd instalment on or before 18.10.2024 to the first respondent Bank; in the event of failure to pay the above amount, the first respondent bank is at liberty to proceed further without making any reference to the Tribunal and the Ad-interim stay granted till 18.10.2024 shall stand vacated.

14. The learned Standing counsel for the first respondent Bank has stated that the second respondent purposefully failed to implead the petitioner as a party to the proceedings before the DRT, Madurai. S.A.No.455 of 2024. It is further stated that the case in S.A.No.455 of 2024 pending before the Chief Judicial Magistrate, Dindigul, is now in the stage of enquiry and unless the said case is disposed of , the first respondent Bank is legally barred in proceeding further. The learned standing counsel requested the Court for a direction to the Chief Judicial Magistrate and the DRT, Madurai to dispose of the cases within a stipulated time as may be fixed by this Court.

15. Mr.AN.Ramanathan, learned counsel appearing for the second respondent submitted that the second respondent is ready to pay the entire sale consideration amount of Rs.28,60,000/- along with 4% interest per annum from the date of deposit till the date of repayment in two equal monthly instalments.

The learned counsel further submitted that subject to payment of the above two instalments to the petitioner, the auction sale held in favour of the petitioner by the first respondent Bank on 30.08.2023 and the sale confirmation letter dated 02.09.2023 and the sale certificate issued to the petitioner on 27.09.2023 may be set aside and the original title deeds pertaining to the subject property may be handed over to the second respondent and hence, prayed for disposing of the writ petition.

16. Heard the learned counsel appearing for the petitioner and the respondents and perused the materials placed before this Court.

17. After considering the facts of the case and the submissions of the learned counsel appearing on either side, it is transpired that second respondent had failed to repay loan to the 1st respondent bank. After giving opportunities, the property was brought for sale. Thereafter, again when the 2nd respondent approached DRT and the civil court, to give opportunity to the 2nd respondent to repay the auction amount to the petitioner, conditional interim protection was given on the confirmation of sale and further to handover possession of the property.

18. The 2nd respondent being the defaulter to the 1st respondent Bank and also failed to comply with the order of the DRT in payment of the sale amount to the Bank as per the schedule and installment stipulated by the court below, now come up with a plea that the 2nd respondent undertakes to pay sale consideration of Rs.28,15,000/- in two equal monthly installments with interest.

19. However, the entire bid auction amount paid by the petitioner is Rs. 28,60,000/- and the said amount was paid by the petitioner on 27.09.2023 by taking loan from HBD financial services. Therefore, it is clear that the petitioner after taking loan amount and paying interest and paid Rs.28,60,000/- on 27.09.203, and after obtaining sale certificate, kept in dark for the possession of the property, cannot expect to accept lesser amount than the auction bid amount.

20. Therefore, keeping in mind the interest of justice and to give a fair opportunity to the 2nd respondent, we are inclined to dispose of the writ petition as infra:-

(i) The 2nd respondent is directed to pay the auction purchase amount of Rs.28,60,000/- along with 8% interest to the auction purchaser/petitioner within a period of two weeks from the date of receipt of a copy of this order.

(ii) On such payment made by the second respondent to the petitioner, the petitioner shall approach bank with the proof of payment received by him and the bank shall take steps to set aside the sale and to hand over the title deed documents to the 2nd respondent. The 1st respondent bank shall also take necessary steps to set aside the sale certificate issued to the petitioner.

(iii) If the second respondent failed to pay the amount as stated supra, the Bank shall approach the DRT and CJM, Dindigul, and take appropriate steps to handover possession of the property to the petitioner within a period of two weeks after the time stipulated to the 2nd respondent to comply with the conditional order of this court. No costs.

[J.N.B., J.] [S.S.Y., J.]

13.08.2025

Index : Yes / No

Tmg/nvsri

To

The Chief Manager,
Represented by its Authorized Officer,
State Bank of India,
Ayyambalayam AD Branch,
Marudanthi Road, Ayyambalayam,
Dindigul – 624 204.

J.NISHA BANU, J.

and

S.SRIMATHY, J.

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