BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.04.2025

DELIVERED ON : 03.06.2025

CORAM

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

AND

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.9001 of 2025
and
W.M.P.(MD)No.6724 and 6725 of 2025

S.M.Nazeema Safoora ... Petitioner

vs.

1.The Karur Vysya Bank Limited,
represented by its Authorized Officer,
Asset Recovery Branch,
R.S.No.170/9, Uthankudi Village,
Near Mattuthavani Bus Stand,
Madurai – 625 107.

2.M/s.Ajay Packaging,
represented by its Partner, R.Vijayaraj,
No.3/226, Selvananthini Nagar,
Senthurayanpudhur Post,
Ramayanpatti Taluk,
Tirunelveli – 627 358.

3.Balakrishnan ... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India seeking for issuance of Writ of Certiorarified Mandamus to call for the records of the first respondent relating to the impugned sale notice, dated 20.11.2024 and consequential sale certificate, dated 03.03.2025 issued in favour of the third respondent to release the property in S.Nos. 26/1, 26/2, 26/3, Now S.No.20/1, admeasuring an extent of 1.40 acres situated in Riyas Nagar, Vaigakulam Village, Tirunelveli, on receipt of the remaining OTS amount of Rs.54 lakhs and consequently, return the original title deeds in respect of the said property to me within a time frame stipulated by this Court.

For Petitioner	:Mr.N.Dilip Kumar
For R1	:Mr.P.Madhan Alexander
For R3	:Mr.Aayiram K.Selvakumar

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ORDER

(Order of this Court was made by **S.SRIMATHY, J.**)

The present Writ Petition has been filed for Certiorarified Mandamus to quash the impugned sale notice, dated 20.11.2024 and consequential sale certificate, dated 03.03.2025 and to direct the first respondent to release the property in S.Nos.26/1, 26/2, 26/3, Now S.No. 20/1, admeasuring an extent of 1.40 acres situated in Riyas Nagar, Vaigakulam Village, Tirunelveli, and return the original documents to the petitioner.

2.The brief facts, as stated in the affidavit filed in support of this Writ Petition, is that the second respondent is a partnership firm. Originally one R.Vijayaraj and Ananthi had started the firm. On 18.05.2016, the second respondent availed machinery loan of Rs.6,38,000/- from the first respondent Bank. In the meanwhile, the said R.Vijayaraj informed the petitioner that he has got machinery loan, but he needs additional working capital for expanding his business and requested the petitioner to join as partner in the partnership firm and extend her property, as collateral for banking loan. Hence, the petitioner joined the partnership firm and extended her property, as security for the second overdraft loan for a sum of Rs.40,00,000/- and executed a memorandum of deposit of title deed, dated 01.12.2016 vide Doc.No. 3542/2016. Further, the petitioner and her husband had also executed a guarantee for securing repayment.

3.The contention of the petitioner is that even though she was a partner, she was inducted only for the purpose of availing loan for the partnership firm and the said R.Vijayaraj was managing the said firm and the petitioner was under the *bona fide* believe that the said R.Vijayaraj was repaying the loan promptly. However, on 05.06.2018, the petitioner received a communication from the Bank that there are arrears in the loan. Thereafter, when the petitioner enquired, it was informed that there is no such firm, called M/s.Ajay Packaging and it is a shell company and the said R.Vijayaraj swindled the funds. Hence, the petitioner preferred a complaint and an FIR was registered in Cr.No.42 of 2019 on the file of CCB, Tirunelveli City.

4.In the meanwhile, on 29.03.2019, the loan account was declared as NPA. On 23.04.2019, Section 13(2) notice was issued for a sum of Rs.47,85,370.21/-. Thereafter, possession notice, dated 06.09.2019, under Section 13(4) was issued. Thereafter, sale notice, dated 20.11.2024, was issued indicating that e-auction was scheduled on 20.12.2024. Further, the petitioner learned that the said R.Vijayaraj negotiated the Bank for one time settlement and agreed to pay Rs.64,50,000/- and as the per one time settlement terms, he supposed to pay Rs.10,00,000/- and the remaining amount on or before 17.01.2025.

5.But the said R.Vijayaraj has paid only Rs.10,55,000/- and failed to remit the balance amount and the one time settlement scheme was recalled. In these circumstances, the petitioner approached the Bank for one time settlement to save her property on 20.01.2025. But the first respondent Bank informed that the petitioner's property was let in e-auction on 20.12.2024 and a sale certificate is going to be registered on 27.01.2025. But the respondent Bank refused to give any further details, as to the e-auction held on 20.12.2024 and the details of the auction purchaser. Hence, on 24.01.2025, the petitioner informed the Bank that she is ready for one time settlement and get the property released. On receipt of the said communication, the respondent Bank vide communication, dated 18.02.2025 informed that the property was sold for Rs.64,50,000/- and the auctoin purchaser has remitted the entire auction bid.

6.When the petitioner has granted an offer, even before the sale certificate was registered and granted an offer to pay the one time settlement amount on or before 17.01.2025, during the currency of one time settlement period, the Bank with *mala fide* intention has sold the property to the third respondent, hence, the petitioner prayed to direct the respondent Bank to accept the balance amount of Rs.54,00,000/- and release the property.

7.Inspite of sufficient opportunity, the respondents failed to file any counter. In the meanwhile the petitioner was directed, vide interim order, dated 02.04.2025, to deposit the balance amount of Rs.54,00,000/- in the respondent Bank on or before 08.04.2025. In compliance with the said interim order, the petitioner had deposited the entire amount of Rs.54,00,000/- on 03.04.2025 and filed a memo to that effect.

8.The dates and events are very important in the present case. It is seen that on 20.11.2024 sale notice was issued fixing e-auction on 20.12.2025. The said R.Vijayaraj submitted a proposal for one time settlement on 16.12.2024 which was accepted by the Bank and the one time settlement amount was fixed as Rs.64,50,000/-. The said R.Vijayaraj was directed to pay Rs.10,00,000/- on or before 17.01.2025. When the one time settlement scheme was subsisting, sale was held by the respondent Bank on 20.12.2024. Thereafter, the first respondent Bank vide communication, dated 18.01.2025, withdrew the one time settlement offer. In the meanwhile, the petitioner submitted a communication, dated 24.01.2025 to settle the remaining one time settlement amount. When the negotiations were going on, the respondent Bank held the sale on 20.12.2024, which is confirmed by the Bank's communication, dated 11.03.2025. When the one time settlement offer is granted and the said offer was subsisting, the respondent Bank is restrained from conducting any sale, in fact, that is the object of one time settlement scheme itself.

9.When the partner R.Vijayaraj has already deposited Rs. 10,55,000/- and the balance amount is to be paid on or before 17.01.2025, then conducting the sale on 20.12.2024 itself is against the one time settlement offer granted by the respondent Bank. The conduct of the Bank ought to be deprecated. The legitimate expectation of the borrower and the guarantor ought to be protected. The third party right is created by the irresponsible act of the Bank, for which the borrower cannot be made to suffer. Therefore, this Court is accepting the prayer of the Writ Petitioner. Since as per the interim order, the borrower has already paid the balance amount of Rs.54,00,000/- by the Writ Petitioner, there is no impediment in ordering the consequential relief. The Bank is directed to accept the amount and close the loan account and return the documents. If there are expenses incurred by the auction purchaser, then the same ought to be paid to the auction purchaser. Therefore, the petitioner is directed to deposit further amount of Rs.50,000/- and the same shall be paid to the auction purchaser through Bank.

10.With this directions, this Writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

(J.N.B., J.) & (S.S.Y., J.)
03.06.2025

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

cmr

J.NISHA BANU, J.

and

S.SRIMATHY, J.

cmr

Pre-delivery order made in
W.P.(MD)No.9001 of 2025

03.06.2025