



W.A(MD)No.2133 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 20.02.2025

CORAM :

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.A(MD)No.2133 of 2023
and
CMP(MD)No.17123 of 2023**

S.Veera Raja

... Appellant

vs.

1. J.Raja Mohammed

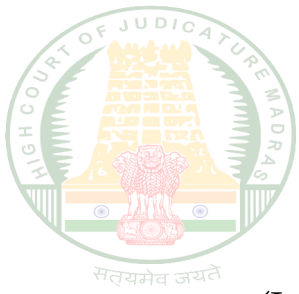
2. The Branch Manager,
Tamilnadu Industrial Investment Corporation Limited,
Plot No.2, Ground Floor,
Pandiyan Nagar 1st Street,
Dindigul-624 001.

3. S.Senthilkumar

... Respondents

PRAYER : Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 20.11.2023 made in W.P(MD)No.6314 of 2023.

For Appellant	: Mr.N.Shanmugaselvam
For R1	: Mr.G.Prabhu Rajadurai
For R2	: Mr.R.Saravanan
For R3	: Mr.R.Maheswaran



W.A(MD)No.2133 of 2023

JUDGMENT

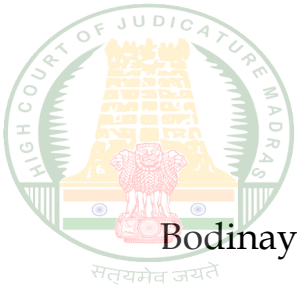
(Judgment of the Court was made by **J.NISHA BANU, J.**)

This writ appeal is filed against the order dated 20.11.2023 made in W.P(MD)No.6314 of 2023.

2. The facts leading to the filing of the writ appeal are as follows:

In order to start a small scale industry and a factory in his property measuring about 8.805 square feet situated in Pudur, Bodinayakkanur, the 1st respondent / writ petitioner availed a term loan of Rs.9 Lakhs and a soft loan of Rs.1.5 Lakhs, totally, Rs.10.5 Lakhs, from the 2nd respondent / Tamilnadu Industrial Investment Corporation Limited (hereinafter referred to as 'TIIC'). The 1st respondent mortgaged the abovesaid land and the factory premises as collateral security for the loan amount. He committed default in 2003 and the TIIC took over the possession of the factory premises and sold it in the year 2014 for Rs.30 Lakhs.

2.1. Thereafter, the TIIC issued a notice dated 30.01.2023, stating that the total outstanding is of Rs.3,29,24,034/- and therefore, the land at



W.A(MD)No.2133 of 2023

WEB Bodinayakanur mortgaged with them would be auctioned on 23.02.2023. On the promise by the TIIC to stop the auction, the 1st respondent paid a sum of Rs.5,00,000/- towards OTS amount on 22.03.2023 through his friend/3rd respondent, who is ready to buy the mortgaged land of the 1st respondent. The said payment was accepted by the TIIC. However, the TIIC gone ahead with the auction, in which, the appellant became the successful bidder for a total sum of Rs. 63,06,000/- and he paid 25% of the auction amount.

2.2. Again, the 1st respondent approached the TIIC and they assured that if he pays 50% of the auction amount, further proceedings would be stopped. Believing the said promise, the 1st respondent paid Rs.28 Lakhs through the 3rd respondent. Even thereafter, the TIIC did not come forward to cancel the sale in favour of the appellant. Hence, the 1st respondent filed the writ petition.

2.3. The Writ Court observed that having accepted the partial payment of Rs.5,00,000/- towards OTS offer, the TIIC should not have gone ahead with the auction and considering the submission of the 1st



W.A(MD)No.2133 of 2023

respondent that he wants to retain his mortgaged property by matching

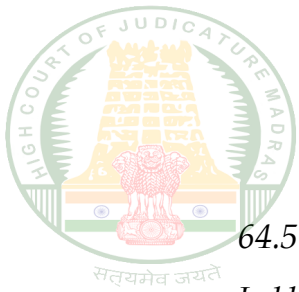
the offer made by the appellant and he is also willing to pay

compensation of Rs.2,00,000/- to the appellant, the Writ Court disposed

of the writ petition. The relevant passage of the order passed by the

Writ Court is extracted hereunder:

7. No doubt, the contentions advanced by the learned Standing counsel as well as the learned counsel appearing for the successful bidder are persuasive and attractive. But equities obtaining in this case cannot be lost sight of. It is seen that TIIC has been following the policy of one time settlements. The petitioner had remitted a sum of Rs.5 Lakhs a day prior to the holding of the auction. Copy of the receipt issued by the Corporation has been enclosed at Page No.64 of the typed set of papers. In the receipt issued by the TIIC, it is mentioned that the payment of Rs.5 Lakhs made on having accepted the partial payment towards OTS offer, the Corporation could not have gone ahead with the auction. The Corporation could have even stipulated that the publication expenses and incidental expenses must be borne by the petitioner. Having accepted the amount paid by the petitioner towards offer for OTS, the auction could not have held. I am not laying down any proposition of law as such. I take note of the fact that one of the securities offered by the petitioner had already been sold for Rs. 30,00,000/- way back in the year 2004. The petitioner is also said to have made a payment of Rs.19,00,000/- over the years. It is for this reason, I am showing indulgence to the petitioner. This is all the more so because, the petitioner wants to retain the property by matching the offer made by the second respondent. The offer of the second respondent has been raised to Rs.



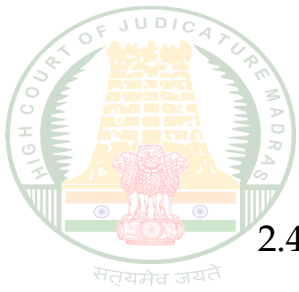
W.A(MD)No.2133 of 2023

64.5 Lakhs. The petitioner states that he is ready to pay a sum of Rs.65 Lakhs to TIIC. He is also ready to pay the initial amount of Rs.15,79,000/- to the second respondent with bank interest. He is also willing to pay a further sum of Rs.2 Lakhs to the second respondent towards compensation. Of course the amount of Rs.2 Lakhs to be paid by the petitioner as compensation will not be counted. The amount of Rs.15,79,000/- alone can be deducted from OTS amount of Rs.65,00,000/- offered to be paid by the petitioner. It is stated that on 01.03.2023, the petitioner had made a further sum of Rs.28 Lakhs to TIIC. Taking into account all these circumstances, TIIC is restrained from confirming the bid made by the second respondent.

8. This writ petition stands disposed of in the following terms:-

- a) The petitioner shall pay a sum of Rs.15,79,000/- with bank account interest @ 9% p.a. to the second respondent within two weeks from today.
- b) The petitioner shall also pay a sum of Rs.2 Lakhs as compensation to the second respondent while making the aforesaid refund.
- c) Once this is complied with, TIIC will formally cancel the earlier tender proceedings.
- d) The petitioner can negotiate with TIIC as per the norms laid down in their OTS policy.
- e) The petitioner's offer is that he will pay a sum of Rs.65 Lakhs towards full quit and settlement on his liabilities. Out of the said amount, the petitioner will be taken to have paid a sum of Rs.33 Lakhs + Rs.15,79,000/- when his OTS offer is considered by the Board. Subject to the petitioner complying with the aforesaid terms, OTS offer will be considered and appropriate order will be passed within a period of four weeks thereafter.

No costs. Consequently, connected miscellaneous petition is closed.

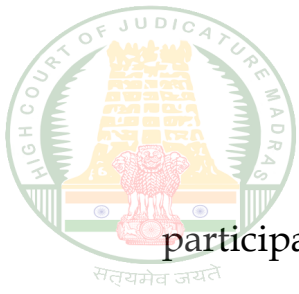


W.A(MD)No.2133 of 2023

2.4. Aggrieved by the said order, the successful bidder in the

WEB COURT auction has come up with this appeal.

3. Learned counsel for the appellant contended that the Writ Court ought not to have held that the TIIC should not have gone ahead with the auction, since the 3rd respondent who is a stranger to the auction proceedings, has paid Rs.5,00,000/- one day before the auction. He would further contend that the 1st respondent, who did not take bona fide steps to approach the TIIC for more than decades, is not entitled for cancellation of sale only on equity. The act of the 1st respondent in paying Rs.5,00,000/- to the TIIC with the aid of the stranger namely, the 3rd respondent one day before the auction, lacks bona fide and therefore, he is not entitled to equity from this Court. It is also submitted that the total dues in the 1st respondent's loan account is Rs.3,29,24,000/- and the one time settlement is not finalised for Rs.64,00,000/- by the TIIC, as claimed by the 1st respondent and therefore, the Writ Court ought not to have found fault with the conduct of auction by the TIIC. The learned counsel also contended that by the order of the Writ Court, the 3rd respondent is causally taking the property indirectly, without



W.A(MD)No.2133 of 2023

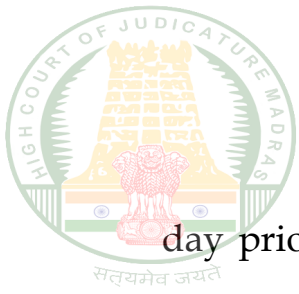
WEB

participating in the auction, especially when the offer of the appellant is finalised, which amounts to unjust enrichment. Thus, he would pray for setting aside the order passed by the Writ Court.

4. The submission made by the learned counsel for the 1st respondent / writ petitioner and the 3rd respondent is two fold. Firstly, having received Rs.5,00,000/- towards OTS prior to the day of auction, the TIIC ought not to have conducted the auction. Secondly, even after the receipt of 50% of the auction amount as promised by the TIIC for cancelling the auction, the TIIC did not come forward to cancel the auction. The Writ Court rightly appreciated the said grounds in proper perspective and disposed of the writ petition, by accepting the matching offer of the 1st respondent plus compensation amount. Thus the learned counsel would submit that no interference is called for to the order impugned.

5. Heard both sides.

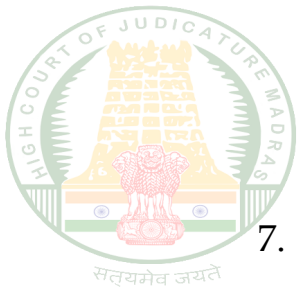
6. As rightly held by the Writ Court, the TIIC on the hand accepted the partial payment of Rs.5,00,000/- towards OTS offer one



W.A(MD)No.2133 of 2023

WEB COPY

day prior to the auction, whereas, on the other hand, it conducted the auction as scheduled on 23.02.2023. The receipt dated 22.02.2023 issued by the TIIC itself shows that the said payment was towards down payment for OTS. Therefore, the TIIC ought not to have conducted the auction. Even after the conduct of auction, when the 1st respondent approached the TIIC, they stated to have assured for cancellation of auction subject to payment of 50% of the auction amount. Pursuant to the same, the 1st respondent through the 3rd respondent deposited Rs. 28,00,000/-. The receipt dated 01.03.2023 issued by the TIIC in this regard shows that the said payment was also towards down payment for OTS. Thus, it appears that having not acted upon their own promise, since the TIIC did not come forward to cancel the sale made in favour of the appellant, the 1st respondent has filed the writ petition. The Writ Court also considering the submission of the 1st respondent that he wants to retain his mortgaged property by matching the offer made by the appellant to the tune of Rs.65,00,000/- as against the offer of the appellant at Rs.64.5 Lakhs and he is also willing to pay compensation of Rs.2,00,000/- to the appellant, disposed of the writ petition with the abovesaid directions.



W.A(MD)No.2133 of 2023

7. Though the appellant contended that having become a successful bidder and after finalisation of his offer, the 1st respondent should not be permitted to retain his property, the fact remains that the very auction itself is bad because of the receipt of OTS amount by the TIIC prior to the auction date and the subsequent date. For the fault of the TIIC, the appellant cannot be made to suffer. Even the 1st respondent himself while came forward to offer matching contribution, was willing to pay compensation of Rs.2,00,000/- to the appellant, which was accepted by the Writ Court and accordingly, the impugned order was passed. We do not find any infirmity in the order passed by the Writ Court.

8. Accordingly, the Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[J.N.B, J.] [S.S.Y, J.]
20.02.2025

Index : Yes / No
Neutral Citation : Yes / No
bala



WEB COPY



W.A(MD)No.2133 of 2023

J.NISHA BANU, J.
AND
S.SRIMATHY, J.

bala

JUDGMENT MADE IN
W.A(MD)No.2133 of 2023
DATED : 20.02.2025