IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-06-2026

CORAM

THE HON'BLE MR.SUSHRUT ARVIND DHARMADHIKARI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

WP No. 2894 of 2023

G.Jayaraj

..Petitioner(s)

Vs

1. The Authorized Officer
   Tamil Nadu Mercantile Bank Ltd.,
   Krishnagiri Branch,
   Bangalore Road, Krishnagiri.

2. The Branch Manager
   Tamil Nadu Mercantile Bank Ltd.,
   Krishnagiri Branch,
   Bangalore Road, Krishnagiri.

..Respondent(s)

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus to direct the respondents to consider the representation dated 15.11.2022 given by the petitioner and consequently direct them refund the 15% amount out of 25% of sale price (Rs.11,50,000/-) after deducting the 10 % EMD amount within a time frame.

For Petitioner(s): Ms.N.Lakshmi Priya

ORDER

(Order of the Court was made by The Chief Justice)

Heard the learned counsel appearing for the petitioner.

2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner seeking issuance of a writ of mandamus to direct the respondents to consider the representation dated 15.11.2022 given by the petitioner and consequently direct them refund the 15% amount out of 25% of sale price (Rs.11,50,000/-) after deducting the 10 % EMD amount.

3. The case of the petitioner is that he participated in the e-auction conducted by the first respondent/bank by remitting Rs.3,81,300/- (Rupees three lakh eighty one thousand three hundred only) on 12.01.2022. The petitioner was declared as highest bidder for the bid amount of Rs.46,00,000/- (Rupees forty six lakhs only). The petitioner was called upon to remit 25% of the bid amount after deducting the EMD amount deposited and thereupon, the petitioner had paid a sum of Rs.7,68,700/- on 12.01.2022 itself. Thus, the petitioner, in all, paid a sum of Rs.11,50,000/-. After paying such amount, the petitioner had requested for two months time to pay the balance amount, however, the respondents had sent a letter dated 26.04.2022 forfeiting the said sum of Rs.11,50,000/-.

4. Challenging the same, earlier, the writ petitioner had filed a writ petition in W.P.No.19302 of 2022, which was dismissed by order dated 29.07.2022. Subsequently, when the property was re-auctioned on 07.10.2022, the petitioner had participated in the auction and purchased the same for

Rs.38,18,000/-. Whileso, the petitioner had approached the bank with a representation dated 15.11.2022 requesting for refund of the forfeited amount. Having found no response for the same, the present writ petition has been filed seeking a direction to the respondents to refund atleast 15% of the amount paid after deducting the 10% Earnest Money Deposit.

5. It is not in dispute that proceedings were initiated by the first respondent/bank invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Therefore, in our considered opinion, the petitioner has to approach the Debts Recovery Tribunal assailing the measures initiated by the first respondent/bank, including forfeiture of the amount deposited by him.

6. An identical issue was considered by the Supreme Court in *Agarwal Tracom (P) Ltd. v. Punjab National Bank*[1]. For ease of reference, the issue framed by the Supreme Court is reproduced hereunder:

> *"17. The short question that arises for consideration in this appeal is* ***whether the High Court was justified in holding that the remedy of the appellant (auction-purchaser) lies in challenging the action of the secured creditor (PNB) in forfeiting the deposit by filing an application under Section 17 of the Sarfaesi Act before the DRT or the remedy of the***

[1] *(2018) 1 SCC 626*

auction-purchaser is in filing the writ petition under Articles 226/227 of the Constitution of India to examine the legality of such action*?"*

[emphasis supplied]

7. After referring to various provisions of the SARFAESI Act and the Rules framed thereunder, the Supreme Court, in the said decision, emphatically held thus:

"28. We also notice that ***Rule 9(5) confers express power on the secured creditor to forfeit the deposit made by the auction-purchaser in case the auction-purchaser commits any default in paying instalment of sale money to the secured creditor. Such action taken by the secured creditor is, in our opinion, a part of the measures specified in Section 13(4) and, therefore, it is regarded as a measure taken under Section 13(4) read with Rule 9(5)****. In our view, the measures taken under Section 13(4) commence with any of the action taken in clauses (a) to (d) and end with measures specified in Rule 9.*

29. In our view, therefore, ***the expression "any of the measures referred to in Section 13(4) taken by secured creditor or his authorised officer" in Section 17(1) would include all actions taken by the secured creditor under the Rules*** *which relate to the measures specified in Section 13(4).*

30. ***The auction-purchaser (appellant herein) is one such***

person, who is aggrieved by the action of the secured creditor in forfeiting their money. The appellant, therefore, falls within the expression "any person" as specified under Section 17(1) and hence is entitled to challenge the action of the secured creditor (PNB) before the DRT by filing an application under Section 17(1) of the Sarfaesi Act*.*

33. In the light of the foregoing discussion, ***we are of the considered opinion that the writ court as also the appellate court were justified in dismissing the appellant's writ petition on the ground of availability of alternative statutory remedy of filing an application under Section 17(1) of the Sarfaesi Act before the Tribunal concerned to challenge the action of PNB in forfeiting the appellant's deposit under Rule 9(5)****. ...*

34. The appellant is, accordingly, granted liberty to file an application before the Tribunal concerned (DRT) under Section 17(1) of the Sarfaesi Act, which has jurisdiction to entertain such application within 45 days from the date of this order. In case, if the appellant files any such application, the Tribunal shall decide the same on its merits in accordance with law uninfluenced by any of the observations made by this Court and the High Court in the impugned judgment. ... "

[emphasis supplied]

8. In the light of the authoritative pronouncement of the Supreme Court in the aforesaid decision, which squarely answers the issue raised in the present

writ petition, we dismiss the writ petition with liberty to the petitioner to approach the Debts Recovery Tribunal. If the petitioner approaches the Debts Recovery Tribunal, the period of limitation shall be reckoned by excluding the period spent by the petitioner in this court for pursuing the writ petition. There shall be no order as to costs.

(SUSHRUT ARVIND DHARMADHIKARI, C.J.) (G.ARUL MURUGAN J.)

18-06-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
ssk

To

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AND
G.ARUL MURUGAN, J.

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