

Vinitha Gulecha Vs. Assistant General Manager of the State Bank of Travancore

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Court : Chennai

Decided On : Jan-29-2014

Judge : M.Jaichandren

Appellant : Vinitha Gulecha

Respondent : Assistant General Manager of the State Bank of Travancore

Judgement :

In the High Court of Judicature at Madras Dated:29.01.2014 Coram: The Hon'ble Mr.Justice M.Jaichandren and The Hon'ble Mr.Justice K.Kalyanasundaram Writ Petition No.34591 of 2013 Vinitha Gulecha .. Petitioner vs. 1.The Assistant General Manager, State Bank of Travancore, ARM Branch, Chennai-18. 2.The Recovery Officer, Debts Recovery Tribunal-I, Chennai-2. .. Respondents PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a writ of certiorari praying for the relief as stated therein. ----- For petitioner : Mr.N.V.Srinivasan Senior Counsel for M/s.N.V.S. & Associates For respondents : Mr.P.N.Radhakrishnan for R.1 -----

ORDER

[Order of the Court was made by M.Jaichandren, J.]. Heard the learned counsel appearing on behalf of the petitioner, as well as the learned counsel appearing on

behalf of the 1st respondent-bank.

2. This Writ Petition has been filed praying that this Court may be pleased to issue a Writ of Certiorari, to quash the proclamation of the sale notice, dated 20.11.2013, in D.R.C. No.37 of 2013, issued by the 2nd respondent, for the sale of the schedule mentioned properties, through public auction, on 30.12.2013.

3. At this stage of the hearing of the writ petition, the learned counsel appearing on behalf of the petitioner had placed before this Court, a letter, dated 28.1.2014, addressed to the 1st respondent. The contents of the letter, dated 28.1.2014, read as under:- ".We have remitted Rs.5,43,00,000/- [Rupees Five Crores Forty Three Lakhs only]. in your Zero Balance Account [A/C No.67095405385]. at the Alwarpet Branch, Chennai. We request you to kindly appropriate Rs.5,07,43,190.29 [the amount you informed us as the dues in the account]. out of the amount remitted, towards our loan outstanding with you, close the captioned account, and issue us NO DUE CERTIFICATE.". Further, a memo, dated 29.1.2014, has been filed by the 1st respondent-Bank, before the Recovery Officer, Debts Recovery Tribunal-I, Chennai, in D.R.C.No.37 of 2013, in O.A.No.197 of 2010. The said memo reads as under:- ".MEMO FILED BY THE APPLICANT BANK It is respectfully submitted by the Applicant Bank as follows:- 1.The Applicant Bank filed OA No.197/2010 dated 07/08/2010 before the Hon'ble Debt Recovery Tribunal-I, Chennai and obtained final order in the OA on 17.10.2012. A Debt Recovery Certificate, DRC No.37/2013 dated 29.04.2013 was also issued by the Hon'ble DRT-I, Chennai, in favour of the Applicant Bank for recovery of the dues of the defendants. Learned Recovery Officer has issued Demand Notice dated 31/05/2013 demanding payment of Rs.4,53,98,126.57 [Rupees four crore fifty three lakh ninety eighty thousand one twenty six and paise fifty seven only]., being the dues of the defendants as on 23/05/2013, along with interest from 24/05/2013, costs charges and expenses. 2.It is submitted that, consequent to failure of the defendants to pay their dues, the Learned Recovery Officer attached the DRC Scheduled property on 25/10/2013 and issued a Sale proclamation on 20/11/2013 to sale the property through e-auction dated 30/12/2013. 3.It is submitted that, there was only one bid in the said auction and the Learned Recovery officer was pleased to accept the sole bid for Rs.7,00,50,000/- at the conclusion of the sale. 4.Pending confirmation

of the auction sale and the Writ Petition filed in High Court, remittances were made to the Applicant Bank, on 27/1/2014 and 28/1/14, to its Zero Balance Account, amounting to Rs.5,43,00,000/- (Rupees five crores forty three lacs only). The Company has submitted a letter dated 28/1/2014 to appropriate an amount of Rs.5,07,43,190.29 [Rupees five crore, seven lacs, forty three thousand one hundred and ninety paise twenty nine only]. towards its dues of the Bank as on 29/01/2014 inclusive of up to date principal, interest and costs and close the loan account, and issue No-due Certificate. 5.It is humbly submitted that the learned Recovery Officer of Debt Recovery Tribunal-I may be pleased to take a note of the above facts and give directions to proceed further in the recovery proceedings."

4. From the letter, dated 28.1.2014, written by the petitioner, to the 1st respondent-Bank, and the memo, dated 29.1.2014, filed by the 1st respondent-bank, before the Debts Recovery Tribunal-I, Chennai, it is noted that the petitioner had remitted a sum of Rs.5,43,00,000/- [Rupees Five Crores Forty Three Lakhs only]. in the 1st respondent's Zero Balance Account [A/C No.67095405385]., at the Alwarpet Branch, Chennai. It is also noted that the petitioner had stated that a sum Rs.5,07,43,190.29 could be appropriated by the 1st respondent-bank, as full and final settlement of the dues said to be payable by the petitioner, to the 1st respondent-bank.

5. The learned counsel appearing on behalf of the 1st respondent-bank had submitted that the 1st respondent-bank may be permitted to appropriate the amount of Rs.5,07,43,190.29, from the Zero Balance Account [A/C No.67095405385]., at the Alwarpet Branch, Chennai, as full and final settlement of the dues payable by the petitioner, to the 1st respondent-bank. He had further submitted that it is for the petitioner to file an appropriate application, before the 2nd respondent herein, with regard to the penalty payable to the auction purchaser, if any, for setting aside the auction sale held, on 30.12.2013, as per the auction sale notice, dated 20.11.2013, as per Rule 60 (1) (b) of the Second Schedule to the Income Tax Act, 1961.

6. The learned counsel appearing on behalf of the petitioner had submitted that an appropriate application would be filed, by the petitioner, before the 2nd

respondent, to set aside the auction sale held, on 30.12.2013, subsequent to the sale notification, dated 20.11.2013, as per the provisions of law.

7. In view of the submissions made by the learned counsels appearing on either side, we permit the 1st respondent-bank to appropriate the sum of Rs.5,07,43,190.29, which is lying in the 1st respondent's Zero Balance Account [A/C No.67095405385], at the Alwarpet Branch, Chennai, towards full and final settlement of the dues payable by the petitioner, to the 1st respondent-bank, as per the letter, dated 28.1.2014, written by the petitioner, to the 1st respondent-Bank, and the memo, dated 29.1.2014, filed by the 1st respondent-bank, before the Debts Recovery Tribunal-I, Chennai.

8. We further permit the petitioner to file an application, before the 2nd respondent, to set aside the auction sale held, on 30.12.2013, subsequent to the sale notification, dated 20.11.2013, as per the provisions of law. On such application being made, it would be open to the 2nd respondent to consider the same and pass appropriate orders thereon, on merits and in accordance with law, as expeditiously as possible, after issuing a notice to the auction purchaser. The claims to be made by the auction purchaser, if any, shall also be considered by the 2nd respondent, at the time of hearing of such application. However, it is made clear that the excess amount deposited by the petitioner, in the 1st respondent's Zero Balance Account [A/C No.67095405385], at the Alwarpet Branch, Chennai, after appropriating the sum of Rs.5,07,43,190.29, payable to the 1st respondent-Bank, shall be maintained by her, in the said account itself, till final orders are passed on the application to be filed by the petitioner, before the 2nd respondent.

9. The Writ Petition is disposed of, with the above directions. No costs. M.P.No.1 of 2013 stands closed. [M.J.J.], [M.K.K.S.,J]. gs. 29th January, 2014
Index:Yes/No.Internet:Yes/No.Note to Office:- Issue today. M.Jaichandran, J.

and K.Kalyanasundaram, J.

gs To 1.The Assistant General Manager, State Bank of Travancore, ARM Branch, Chennai-18. 2.The Recovery Officer, Debts Recovery Tribunal-I, Chennai-2.
W.P.No.34591 of 2013 29.1.2014

