(2015) 01 MAD CK 0022

In the Madras High Court

Case No : W.P. No. 34708 of 2014 and M.P. No. 1 of 2014

K.M. Saravanakumar APPELLANT

Vs

Central Bank of India and Others RESPONDENT

Date of Decision : 05-01-2015

Acts Referred:

Citation : (2015) 4 BC 177

Hon'ble Judges : Satish K. Agnihotri and M. Venugopal, JJ.

Bench : Division Bench

Advocate : R. Sivakumar, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—Being aggrieved by the order dated 18th November, 2014 passed by the Recovery Officer, Debts Recovery Tribunal, Ramanathapuram, Coimbatore in the matter of Central Bank of India, Tirupur v. Smt. Rukumani, the petitioner has come up with this petition questioning the legality and validity of the order. The facts, as projected by the petitioner, is that pursuant to the e-auction held on 10th October, 2014, the petitioner, being the highest bidder, was sold the property in question. Thereafter, the petitioner had paid an amount of Rs. 3.15 lacs being 25% of the sale amount on the same day. The balance amount of Rs. 9,47,510/- was paid on 24th October, 2014. It appears that the Respondent No. 3, who was the original owner of the property, had settled dues with the Bank before 30 days of the e-auction proceedings.

2. The contention of the learned Counsel for the petitioner before this Court is that once an immovable property has been sold in execution of a certification, the same cannot be set aside without following due process of law. Under proviso to Rule 63(2) of Schedule II-Procedure for Recovery of Tax of the Income-tax Act, 1961, if an application is made for setting aside the sale in execution of a certificate, the person affected has to be noticed before an order is passed. In the case on hand, after e-auction has taken place and the petitioner has

deposited 25% of the total amount, even if the payment has been made within 30 days, the sale could not have been set aside without proper application and also without affording notice to the petitioner. The petitioner was the successful bidder and also deposited 25% of the total amount on that very day and subsequently the remaining amount on 24th October, 2014.

3. We have considered all aspects of the matter. Under Rule 60 of Schedule II--Procedure for Recovery of Tax of the Income-tax Act, 1961, the defaulter or any other person, whose interests are affected by the sale in execution of a certificate, may at any time within 30 days from the date of sale apply to the Tax Recovery Officer to set aside the sale on deposit of the amount specified in the proclamation of sale, of which the sale was ordered with interest. In the case on hand, a perusal of the impugned order dated 18th November, 2014, it appears that proper application was made and full amount was deposited by the defaulter and the defaulter had settled the dues and as such, the sale was rightly set aside. The highest bidder, i.e., the petitioner was entitled to get back the bid amount.

4. Needless to state that the Respondent No. 3 is the original owner. She has failed to make payment to the Bank and as such, the secured asset, i.e., the property in question, was put into auction and the petitioner, being the highest bidder, was directed to deposit 25% of the total amount, but the sale was not confirmed and as such, the petitioner has not acquired any right before confirmation of the sale. Accordingly, the Recovery Officer was right in restoring the property in question to the ownership of the, respondent No. 3 and also further ensured that the amount paid by the auction purchaser is paid back to the auction purchaser.

5. The requirement of issuance of notice under Rule 63 arises when the sale has been confirmed in favour of the auction purchaser and the right has accrued in favour of the auction purchaser. In the case on hand, the petitioner being the highest bidder had deposited the amount. However, the sale was not confirmed as the possession of the property in question was not handed over to the petitioner. Thus, we are of the considered opinion that the original owner is entitled to restoration of the property and there is no irregularity in the impugned order. Resultantly, we uphold the impugned order dated 18th November, 2014 and consequently, the writ petition stands dismissed. No costs. The connected miscellaneous petition is closed.