(2014) 02 MAD CK 0163

In the Madras High Court

Case No : Writ Petition No. 21918

Mrs. V. Unnamalai Proprietrix M/s. Aiswaraya Enterprises — APPELLANT

Vs

The Authorised Officer M/s. Indian Bank — RESPONDENT

Date of Decision : 21-02-2014

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2014) 02 MAD CK 0163

Hon'ble Judges : M. Jaichandren, J;K. Kalyanasundaram, J

Bench : Division Bench

Advocate : V. Prakash for M/s. Alakendran Law Associates, for the Appellant; Rajendran Raghavan, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—Since the issues involved in both the writ petitions are similar in nature, they have been taken up together and a common order is being passed. Heard the learned counsels appearing on behalf of the parties concerned.

2. Mr. V. Prakash, the learned senior counsel, appearing on behalf of the petitioners had relied on the decision of the Supreme Court, in M/s. Pappu Sweets and Biscuits Vs. Commissioner of Trade Tax U.P Lucknow, , to state that the ''popular parlance'' test should be used to find out the real meaning of public auction, as understood by the people at large. In that sense, an e-auction cannot be held to be a public auction.

3. The learned counsel had also submitted that the properties in question had been brought for sale, by way of e-auction, even though the petitioners had deposited Rs. 75,00,000/- in each of the writ petitions, as per the order passed by this Court, on 30.10.2013, and had requested the respondent bank to settle the issues relating to the discharging of the liabilities of the petitioners, by way of an One Time Settlement. However, there has been no proper response from the respondent bank, in respect of the said request made by the petitioners.

4. The learned senior counsel had further contended that the Reserve Bank of India Guidelines are binding on the Bank concerned and the One Time Settlement scheme proposed by the petitioners ought to be considered by the respondent bank, as certain rights exist in favour of the borrowers and such rights could be enforced against the secured creditors, in respect of the secured assets in question. The learned senior counsel had relied on the decision of the Supreme Court, in Sardar Associates and Others Vs. Punjab and Sind Bank and Others, in support of the said contentions. However, this Court is of the view that the decisions cited supra would not apply to the facts and circumstances arising for the consideration of this Court, in the present writ petitions.

5. It is noted that, in the decision, reported in Ashoka Smokeless Coal Ind. P. Ltd. and Others Vs. Union of India (UOI) and Others, , the Apex Court had been called upon to decide the issue as to whether an e-auction could be held, with regard to the sale of huge quantities of coal, especially, when no eligibility criterion had been fixed for the persons participating in the e-auction process. It had been held that, when the highest price and the highest quantity were the only factors for the sale and allocation of coal to the bidders, it would result in traders buying large quantities of coal resulting in the manufacturers of hard coke and smokeless coal and other small units having to buy at prohibitive rates from the traders. However, in the cases on hand, such negative factors are not in existence. In fact, the e-auction sale procedures followed by the respondent bank is aimed at getting the best possible price for the secured assets brought for sale. As such, we do not find any merit in the contentions raised on behalf of the petitioners. We also do not find sufficient cause or reasons to direct the respondent bank to consider the One Time Settlement scheme proposed by the petitioners. It is for the respondent bank to consider the same, if it finds the proposals made by the petitioners reasonable and acceptable, considering the interests of the bank.

6. A number of grounds have been raised by the petitioner in the present writ petition challenging the e-auction sale notice issued by the respondent Bank, dated 5.7.2013.

7. In similar circumstances, this court had passed an order, dated 20.2.2014, in W.P. No. 34376 of 2013 etc. (batch), wherein e-auction sale notices had been challenged. In the said order, dated 20.2.2014, this Court had upheld the validity of the e-auction sale procedures adopted by the respondent Banks concerned while bringing the secured assets for sale, in discharge of the liabilities of the petitioner. As such, the issues raised for the consideration of this court, in the present writ petition, are covered by the decision of this court, dated 20.2.2014.

8. It is noted that the Supreme Court, in United Bank of India Vs. Satyawati Tondon and Others, , has made it clear that the scope of interference by this Court, under Article 226 of the Constitution of India, is limited in nature. It has also made it clear that the statutory schemes provided under the specific enactments should not be defeated by the exercise of the writ jurisdiction by this

Court. As such, the alternative remedies provided to the petitioner, under the Securitisation and Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002, ought not to be interfered with, by this Court, by invoking its writ jurisdiction, under Article 226 of the Constitution of India. The Supreme Court has reiterated the said position of law, in a recent decision, in GM, Sri Siddeshwara Co-operative Bank Ltd. and Another Vs. Sri Ikbal and Others, .

9. It is noted that the petitioners had deposited Rs. 75,00,000/- in each of the writ petitions, pursuant to the orders passed by this Court, on 6.8.2013 and 30.10.2013, in W.P. No. 21918 and 21919 of 2013 & M.P. Nos. 1 and 1 of 2013. Pursuant to the said orders, the petitioners had deposited a total amount of Rs. 1,50,00,000/- in a No-lien loan account of the Indian Bank, High Court Branch, Chennai.

10. It had been admitted by the learned counsel appearing for the respondent bank that the amount of Rs. 1,50,00,000/- had been deposited by the petitioner, as per the orders passed by this Court, on 6.8.2013 and 30.10.2013.

11. In view of the dismissal of the above writ petitions, by this Court, we find it appropriate to permit the petitioners to withdraw the amount deposited by them, which is said to be lying in a No-lien loan account of the Indian Bank, High Court Branch, Chennai, forthwith. In such circumstances, we find it appropriate to hold that the writ petitions are devoid of merits. Accordingly, the Writ Petitions stand dismissed. Connected M.P. Nos. 1, 1, 3 and 4 of 2013 are closed. No costs.

