

SUPREME CUORT OF INDIA

M.Noohukan

Vs.

Bank of Travancore

C.A.No.1582 of 2008

(Tarun Chatterjee and Harjit Singh Bedi JJ.)

25.02.2008

JUDGMENT

Tarun Chatterjee,J.

1. Leave granted.

2. The Bank of Travancore instituted a mortgage suit against the appellant which was dismissed by the trial court, but on appeal, the appellate court had set aside the judgment of the trial court and passed a preliminary decree. The preliminary decree, subsequently, was made final. In pursuance of the final decree, the Bank of Travancore filed an execution petition praying for an order to bring the mortgaged property to sale. By a court auction dated 29th of August, 2003, the property of the judgment debtor-appellant which was mortgaged with the Bank was sold for a sum of Rs.3, 20,300/- in which the respondent No.2 was a successful bidder. The execution petition was thereafter posted on 29th of October, 2003 for passing an order confirming the sale. An application for setting aside the auction sale was filed by the appellant on 13th of September, 2003 in which the appellant prayed for setting aside the auction sale of the decrials premises and to decide the lawful amount that was required to be paid by the appellant to the Bank. The learned Subordinate Judge, Padmanabhapuram, however, dismissed the said application for setting aside the auction sale. Feeling aggrieved, the appellant filed an appeal before the learned District Judge, Kanyakumari. The learned District Judge also dismissed the appeal against which a revision petition was filed before the Madurai Bench of the Madras High Court. On 24th of November, 2005, a learned Judge of the High Court had passed an order by setting aside the sale on certain terms and condition as mentioned in the said order. Subsequent to the order dated 24th of November, 2005, another application was filed for correction of the order in the calculation and for extension of time and time to deposit the amount, as directed in the aforesaid order, was to be read as 23rd of December, 2005 instead of 1st of December, 2005. On failure to make such deposit in terms of the aforesaid order of the High Court, the appellant made an application for extension of time to deposit a sum of Rs.2, 43,978.65 paisa from 23rd of January, 2005 to 18th of January, 2006. But by an order dated 2nd of March,

2006 of the learned Judge which is impugned in this Court, the High Court dismissed the said application for extension of time by holding that the lodgment schedule for issuing challan for payment was ordered on 23rd of December, 2005 and since the appellant had not made such deposit and not availed of the opportunity given, the application for extension of time must be rejected. Feeling aggrieved by this order, this special leave petition has been filed in respect of which leave has already been granted.

3. By an order dated 4th of July, 2006, a notice was issued on the special leave petition and the following interim order was passed by this Court:

"Issue notice. In the meantime, there shall be stay of further execution proceedings. In the meanwhile, the petitioner is permitted to deposit Rs.2, 43,978.65 within two weeks from today, failing which the interim order granted shall stand automatically vacated and the special leave petition shall also stand dismissed."

4. From the affidavit filed by the appellant, it appears that in compliance with the aforesaid order of this Court dated 4th of July, 2007, a sum of Rs.2, 43,978.65 has already been deposited and a copy of the receipt has also been filed which is on record. Keeping all these facts in mind and after hearing the learned counsel for the parties and considering the entire materials on record, we are of the view that when the High Court had passed an order setting aside the auction sale on deposit of the amount mentioned in the said order which was complied with by the appellant by making some delay, the present appeal shall be disposed of in the following manner :- After hearing learned counsel for the parties, we find that the 1st respondent-Bank would be entitled to Rs.3,00,000/- and the 2nd respondent-the auction purchaser would be entitled to Rs.5,00,000/-, and upon such payment to the respondents, auction sale shall stand set aside. Therefore, the 1st and 2nd Respondents would be permitted to withdraw the aforesaid sums due to them from the trial court or the executing court. Such withdrawal would be after the appellant deposits a further sum of Rs.1, 36,000/- into the executing court or the trial court within a period of ten weeks from this date. We are informed that presently a sum of Rs.6,64,280/- is lying in the Court of Subordinate Judge, Padmanabhapuram (trial court or the executing court) to the credit of the suit O.S.No.155 of 1999 and E.P. No.25 of 2002 which includes a sum of Rs.2,43,980/- invested by the trial court or the executing court in Fixed Deposit. After disbursing the aforesaid amount, as noted herein above, to the respondents, if any amount is still lying with the trial court or with the executing court, in that event, the appellant would be entitled to withdraw the excess amount lying with the court.

5. On the above terms and conditions, the appeal is therefore disposed of. There will be no order as to costs.