IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P. No.19637 of 2015 and M.P. Nos.1 & 2 of 2015

T. Gandhimathi ... Petitioner

vs.

The Authorised Officer
Bank of India
Thiruppur SME Branch
Gopichettypalayam
Erode District 638 452 ... Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records of the respondent in the impugned demand notice in Ref.No.TRP/ADV/15-16/1 dated 21.04.2015 and impugned possession notice dated 23.06.2015 and quash the same and consequently, direct the respondent bank to consider the petitioner's one time proposal representation dated 24.04.2015 in the petitioner loan A/c No.821430110000067.

For petitioner Mr. V. Manohar
for Mr. S. Muthukrishnan

For respondent Mr. F.B. Benjamin George

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ORDER

(Order of the Court was made by SATISH K. AGNIHOTRI, J.)

Mr. F.B. Benjamin George, learned counsel, takes notice for the respondent bank.

2 Indisputably, the petitioner availed cash credit facility to the tune of Rs.1.70 crores from the respondent bank in 2011 against mortgage of the property, allegedly an agricultural one, measuring an extent of 3.24 acres situated at S.F. No.214-4 (Old S.F. No.289), Alukuli Village, Gobichettipalayam Joint 1 Sub-Registration District. She defaulted in making repayment of loan and as such, her account was classified as a Non-Performing Asset as on 30.03.2015. The petitioner was served with a demand notice under Section 13(2) of the SARFAESI Act on 21.04.2015, calling upon her to discharge her

liability of Rs.1,85,18,985/- in full, with interest at the rate of 14.35% per annum with monthly rests, within a period of 60 days from the date of the said notice. Thereafter, it appears that the petitioner has made a representation on 24.04.2015 with a request to consider concession of about 34% of loan amount and write off the interest and also for One Time Settlement, within a period of one year. The respondent bank, not being satisfied, issued a possession notice under the provisions of Section 13(4) of the SARFAESI Act read with Rule 8 of the Security Interest (Enforcement) Rules, 2002, informing the borrowers and guarantors and also, the public in general, not to deal with the property in question. The petitioner is before us by way of this writ petition, questioning the legality and validity of the aforesaid two notices and also for a direction to consider her representation dated 24.04.2015 for One Time Settlement.

3 We have examined the contention of the learned counsel for the petitioner and the learned counsel for the respondent bank. We have also perused the pleadings and documents appended thereto.

4 Under the impugned notice, what has been notified is that the borrower, guarantor and also the public in general, be restrained from dealing with the secured asset thereafter. The consequential action to initiate measures for recovery of money can be questioned before the statutory appellate authority and as such, no cause of action has arisen at this stage.

5 At the threshold, it is worth pointing out that this writ petition is premature, as no action pursuant to the possession notice issued under Section 13(4) of the SARFAESI Act has been initiated by the respondent bank. Even otherwise, if the petitioner is apprehensive of any proposed action after the notice issued under Section 13(4), ibid, she is at liberty to take recourse to the statutory forum, as available under the provisions of the SARFAESI Act.

6 So far as the prayer of the petitioner to issue a direction to the respondent bank to consider her representation for One Time Settlement after grant of concession and waiver of interest is concerned, no such a direction can be issued, as it is for the respondent bank to examine the petitioner's representation and take a decision in the light of various factors involved in the transaction. The conduct of the petitioner is equally important for taking a decision.

7.Resultantly, the writ petition is dismissed. However, liberty is reserved to the petitioner to take recourse to the other appropriate remedy as available under the provisions of law. Costs made easy. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

The Authorised Officer
Bank of India
Thiruppur SME Branch
Gopichettypalayam
Erode District 638 452

+2 cc to Mr.S.Muthukrishnan, Advocate,SR.33459, 33860.

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