IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

W.P. No.21059 of 2015
and
M.P.No.1 of 2015

1.M/s.Salem Super Service,
rep by its Proprietor Mr.M.S.Kandasamy,
No.88, 6th Cross Street,
Sai Nagar,
Virugambakkam,
Chennai-600 092.
2.M.S.Kandasamy .. Petitioners

Vs.

Punjab National Bank,
rep by its Chief Manager,
Nungambakkam Branch,
No.6, Nungambakkam High Road,
Chennai-600 034. .. 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 proceedings of the respondent bank in their letter No.ARMB/SSS/2015 dated 30.03.2015 and quash the same and consequently direct the respondents herein to close the loan account bearing account No.361200NG00000102 of the petitioner with the respondent bank and return all original documents provided to the respondent towards collateral security.

For petitioners : Mr.S.Thirumavalavan

For Respondent : Mrs.Geetha Rajasekaran

ORDER

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

Assailing the legality of the communication dated 30th March, 2015, the petitioner, who happens to be the borrower of the amount for the purpose of purchasing of contract carriages, has come up with this writ petition.

2 The facts in nutshell as derived from the pleadings are that the petitioner obtained loan of Rs.31,89,000/- on hypothecation of the vehicle purchased out of the said amount. The immovable property was also mortgaged as collateral security. A further sum of Rs.3,75,000/- was advanced to the petitioner. In default on repayment of loan, an Original Application, being O.A.No.106 of 2002 was filed by the Bank on the file of the Debts Recovery Tribunal at Chennai for the recovery of a sum of Rs.50,69,178/- with interest at the rate of 16.75% per annum. The said application was ordered on 12th February, 2008 and a debt recovery certificate was, accordingly, issued on 19th June 2008 for recovery of Rs.1,01,92,111.96 with further interest at the rate of 16.75% per annum. The petitioner made certain payments. However, for making the payment of remaining Rs.26 lakhs, the petitioner approached the respondent Bank in January, 2011 to settle the dues under One Time Settlement (for short "OTS") scheme, which was accepted by the bank, vide communication dated 9th February, 2011. Thereagainst, only payment to the tune of Rs.7,50,000/- was made by 31st December, 2011. Thus, the OTS failed and the same was communicated to the petitioner. The Bank proceeded for recovery of the amount by initiating valuation of the property.

3 The petitioner again approached the Bank after about three years, vide letter dated 15th December, 2014, offering a sum of Rs.22 lakhs and the same was declined on the ground that the failed OTS cannot be revived under any scheme. However, the petitioner was permitted to remit an amount of Rs.22 lakhs in no lien account and was advised to improve his offer. The petitioner, thereafter, made a representation on 27th December, 2014 for the revised offer of Rs.50 lakhs. Agreeing to the offer to remit a further sum of Rs.28 lakhs in two installments by 30th June, 2015, the impugned communication was sent to him on 30th March, 2015. The petitioner is before this court, questioning the validity of the said order.

4 The learned counsel appearing for the Bank would contend that the petitioner had been given much more opportunity than feasible under the provisions of law. The petitioner came for OTS, which failed on account of non adhering to time schedule fixed by the bank in consultation with the petitioner. Thereafter, the petitioner has attempted to revise the OTS, which was accepted and the petitioner was given two installments to make the entire payment on or before 30th June, 2015, vide communication dated 30th March, 2015. This petition is a dilatory tactics to avoid further proceedings to be taken by the bank to recover the outstanding dues.

5 In response, the learned counsel appearing for the petitioner has no reply, except that the petitioner is in financial

difficulty and the petitioner ought to have been given some more concession in making outstanding payment.

6 We have examined the rival contentions and also the facts of the case in its entirety.

7 Indisputably, the petitioner was given opportunity time and again to make good the deficiency in payment. The instant impugned communication was issued on the basis of the offer made by the petitioner and as such, it is not open to the petitioner to question the legality of the same as no legal grounds are available to him.

8 Resultantly, we do not find any merit in the petition and the writ petition is, accordingly, dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

vvk

To
The Chief Manager,
Punjab National Bank,
Nungambakkam Branch,
No.6, Nungambakkam High Road,
Chennai-600 034.

1 cc to Mr.S.Thirumavalavan , Advocate Sr.No.42647
1 cc to Mrs.Geetha Rajasekaran, Advocate Sr.No.42679

W.P. No.21059 of 2015

gj(co)
pmk.9.9.2015