BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.06.2015
Coram:

THE HONOURABLE Mr.JUSTICE S.MANIKUMAR
and
THE HONOURABLE Mr.JUSTICE G.CHOCKALINGAM

Writ Appeal (MD) No.465 of 2015
and
M.P.(MD)No.1 of 2015

Prem Kumar, S/o.Paramasivam ... Appellant/Petitioner

vs.

1.The State Bank of India,
rep.through its Assistant General Manager,
Stressed Assets Resolutions Centre,
Corporation Building, RMS Road,
Madurai-625 001.

2.The State Bank of India,
Rep.through its Branch Manager,
Vinayaga Nagar Branch,
Melur Main Road, Madurai-625 020.

3.M/s.Deepthi Agencies,
rep.through its Service Manager,
No.1, Jayaraj Nagar,
opposite to Fathima College,
Madurai-625 018. ... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent, against the order, dated 05.12.2014, made in W.P.(MD)No.2887 of 2012.

Prayer in WP(MD). 2887/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari to call for the records of the 1st respondent proceedings in SARB/3309/2542 dated 01.03.2012 and quash the same.

For Appellant : Mr.A.Haja Mohideen

JUDGMENT

(Judgment of the Court was delivered by **S.MANIKUMAR,J**)

This writ appeal is directed against the order, dated 05.12.2014, made in W.P.(MD)No.2887 of 2012.

2.Notice, dated 01.03.2012, issued by the Assistant General Manager, Stressed Assets Recovery Branch (SARB), State Bank of India, Vinayaganagar Branch, Madurai, has been challenged in W.P.(MD)No.2887 of 2012. A reading of the same indicates that the loan amount of Rs.6,00,000/- was availed by the appellant/petitioner from State Bank of India, Vinayaganagar Branch, Madurai, as vehicle loan, and not repaid by the petitioner. Hence, the account become NPA.

3.On coming to know that the vehicle has been parked in the workshop of M/s.Deepthi Agencies, 1, Jayaraj Nagar, Madurai, the 3rd respondent herein, possession of the vehicle has been taken by the Bank and that the Bank had informed the appellant/petitioner of their proposal to sell the vehicle in tender cum auction sale. Notice dated 01.03.2012 has been assailed on the grounds inter alia that the vehicle met with an accident and therefore the borrower has filed C.C.No.204 of 2010 before the District Consumer Disputes Redressal Forum, Madurai, against the 3rd respondent herein, the insurer of the vehicle, and the respondents 1 and 2 herein, arraying them as Opposite Party Nos.1 to 4, for the following reliefs:

"i.directing the 1st opposite party to commence the repair work of the vehicle bearing registration no:TN 59 AH 1896 immediately without demanding any pre deposit and complete the same within 15 days.

ii.directing the 1st opposite party to hand over the vehicle in good running condition after effecting and completing the repair works and to collect the balance amount incurred for effecting repairs and replaced parts after deducting insurance claim amount.

iii.directing the 1st opposite party not to collect the parking charge of Rs.100/- per day and not to levy any interest or penalty.

iv.directing the opposite party 3 and 4 not to take coercive steps to seize the vehicle bearing no:TN 59 AH 1896 till the vehicle was put on road in running condition and give breathing time to pay and continue the EMI by providing fresh schedule of payment.

v.directing the opposite party 3 and 4 to freeze the loan account and the wave penalty and interest for the period from the date of accident from 15.05.2009 to till date of put on road in running condition.

vi.directing the 2nd opposite party to pay and settle the claim bills for the accident vehicle immediately.

Vii.directing the of the 2nd opposite party to pay Rs.1,78,000/- towards loss of income from 16.05.2009 to 09.11.2009 for 178 days at the rate of Rs.1,000/- per day.

Viii.directing the 2nd opposite party to pay Rs.1,78,000/- towards Depreciation of the value of vehicle from 16.05.2009 to 09.11.2009 for 178 days at the rate of Rs.1,000/- per day.

ix.directing the 1st opposite party to pay Rs.3,65,000 towards loss of income from 05.06.2009 to 19.12.2009 for 365 days Rs.1,000/- per day.

x.directing of the 1st opposite party to pay Rs.3,65,000 towards Depreciation of the value of vehicle from 05.06.2009 to 19.12.2009 for 365 days Rs.1,000/- per day.

xi.directing the 1st opposite party to pay the cost of Depreciation of the value of vehicle from 20.12.2010 to till date of hand over the vehicle at the rate of Rs.1,000/- per day.

Xii.directing the 1st opposite party to pay the loss of income from 20.12.2010 to till date of hand over the vehicle at the rate of Rs.1,000/- per day.

Xiii.directing the 1st opposite party to pay the compensation of Rs.5,00,000/- for mental agony and deficiency service

xiv.directing the 2nd opposite party to pay the compensation of Rs.2,00,000/- for mental agony and deficiency service

xv.award the cost of Rs.10,000/-"

It is also contended that the Bank has filed a civil suit in O.S.No.1226 of 2010 on the file of Subordinate Judge, Madurai, for recovery of Rs.8,13,367.60.

4.The main contention of the appellant/petitioner is that pending disposal of C.C.No.204/2010 on the file of District Consumer Redressal Forum, Madurai, for the reliefs stated as supra and the suit in O.S.No.1226 of 2010 on the file of Subordinate Judge, Madurai, for recovery, possession of the vehicle taken by the Bank and the consequential proposal to sell the same in tender cum auction sale is liable to be set aside.

5.Adverting to the above contentions, the Writ Court has noticed that the loan transaction was of the year 2008 and that the appellant/ petitioner has not taken any efforts to make repayment of the same. On the other hand, contending *inter alia* that a consumer dispute and a civil suit are pending on the file of respective forums, stated supra, the appellant/petitioner has challenged the impugned notice. Considering the conduct of the appellant/petitioner and to strike at a balance between the right of the Bank to recover the loan amount *vis a vis* the liability of the appellant/petitioner to repay the amount to the bank, the writ court, while disposing of the writ petition, at paragraph No.7, has ordered as follows:

> "7.In the result, the petitioner is directed to repay a sum of Rs.3,00,000/- (Rupees three lakhs only) towards loan amount to the first respondent Bank within eight weeks from the date of receipt of copy of this order and on such payment, the vehicle shall be returned to the petitioner within two weeks thereafter with liberty given to the respondent Bank to simultaneously proceed with the suit for recovery of the balance amount, after deducting the amount, if any, already paid. On the failure of the petitioner to make payment as stated above, the first and second respondents are at liberty to bring the property for auction through auction sale and to adjust the sale proceeds and to proceed with the suit for recovery of the balance amount."

6.Challenging the same, the writ appeal has been filed and shockingly one of the grounds raised by the appellant is as follows:

> "b.The order to pay Rs.3,00,000/- within a period of 8 weeks is highly abusive when the petitioner's vehicle was kept idle in the workshop from 15.05.2009 till now and he has no means to pay any amount."

7.Considering the language employed by the appellant in the aforesaid manner, and also the equitable orders to be passed by the Writ Court, we are not inclined to interfere with the order of the writ court. The loan transaction is of the year 2008. The appellant/petitioner has not made any payment towards the loan amount. The loan account has been converted into a non-performing asset (NPA). Public money is given as loan by Banks. Pendency of civil suit/consumer dispute would not absolve the obligation of the appellant/petitioner to discharge the loan amount. Equally, bank, which lends money out of the deposits made by public/customers, has to recover the same. Vehicle has been in the custody of the 3rd respondent for more than one year. We do not appreciate the conduct of the appellant/petitioner. Taking note of one of the grounds raised in the appeal, equity cannot be extended to the appellant/petitioner.

8.For the reasons stated supra, we find no ground to entertain the writ appeal and the same is dismissed. No costs. Connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(Per.Admn.)

/True copy/

Sub Assistant Registrar

To

vs.

1.The Assistant General Manager,
State Bank of India,
Stressed Assets Resolutions Centre,
Corporation Building, RMS Road,
Madurai-625 001.

2.The Branch Manager,
State Bank of India,
Vinayaga Nagar Branch,
Melur Main Road, Madurai-625 020.

+1cc to Mr.Haja Mohideen,Advocate SR.No.28566

Judgment in
W.A.(MD)No.465/2015
and
MP(MD)No.1/2015
Dated:08.06.2015

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PA/PPS/29.06.2015/4P/4C