BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.06.2015

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

W.P.(MD)No.9347 of 2015
and MP(MD)No.1 of 2015

M.N. GURU .. Petitioner

Vs.

1. THE DISTRICT COLLECTOR,
MADURAI DISTRICT, COLLECTORATE, MADURAI.

2. THE BRANCH MANAGER,
BANK OF BARODA, VIRUDHUNGAR BRANCH,
VIRUDHUNAGAR.

3. THE DISTIRCT REVENUE OFFICER,
COLLECTORATE, MADURAI. .. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of Mandamus directing the respondents to consider petitioner's representation dated 03.06.2015 requesting for negotiation and waiver for settling the dues pertaining to petitioner and his wife''s guarantee alone in respect of borrower Mr.Athinarayanan for his overdraft loan account no.3110040000020 without insisting to settle his other liabilities.

For Petitioner : Mr.P.Gopinath

O R D E R

(The order of the Court was made by S.MANIKUMAR, J.)

Material on record discloses that on 13.07.2011, notice under Section 13(2) of the SARFAESI Act, 2002, has been issued to Mr.Athinarayanan. Notice is extracted hereunder:-

BANK OF BARODA
NOTICE TO BORROWER
(UNDER SUB-SECTION-(2) OF SECTION 13 OF THE SARFAESI ACT, 2002)

To Dated:13.07.2011
Mr.K.Athinarayanan,
S/o.Late Mr.Karuppaiah,
Mrs.G.Amutharani, W/o.K.Athinarayanan,
1, Narayanasamy Street, Ram Nagar,
Ambattur, Chennai – 53.

Dear Sir/s/Madam,
Re: Credit Facilities with out Virudhunagar Branch

1. We refer to out letter No. dated 07.09.2009-conveying sanction of various credit facilities and the terms of Sanction. Pursuant to the above sanction you have availed and started utilizing the credit facilities after providing security for the same, as hereinafter stated. The present outstanding in various loan/credit facility accounts and the security interests created for such liability are as under:

Nature and typd of facility	Limit	Rate of Interest	O/s as on 30.06.2011 (Incl. Of Interest up to 30.06.2011)	Security agreement with brief description securities
Baroda Traders Loan	Rs.3500000.00	15.50% at present	3648736/-	Mr.M.N.Guru&Mrs. G.Amutharani given their residential property as security and personal guarantee

2.In the letter of acknowledgement of debt (LAD) dated ___ you have acknowledged your liability to the Bank to the tune of Rs.__ as Fresh Document executed on 07.09.2009.

1.On 30.06.2011 the outstandings stated above include further drawings and interest up to 30.06.2011. Other charges debited to the account are Rs.__.

2.As you are aware, you have committed defaults in payment of interest on above loans/outstanding for the quarter ended June-2011 onwards and _____. Your have also defaulted in payment of instalments of term loan/demand loands.

3.Which have fallen due for payment on various dates and thereafter.

4.Consequent upon the defaults committed by you, your loan account has been classified as Non-Performing Asset (NPA) on _30.06.2011 in accordance with the Reserve Bank of India directives and guidelines. Inspite of our repeated requests and demands you have not repaid the overdue loans including interest thereon."

2. The petitioner, who is the father-in-law of the said Athinarayanan, and who stood as guarantor had executed the residential property for the amount borrowed and lateron declared as NPA, has made a representation dated 03.06.2014, to consider waiver and settlement of loan dues. As the said representation remained unanswered, writ of Mandamus is sought for a direction to the

respondents to consider the said representation dated 03.06.2014, for negotiation and waiver for settling the dues pertaining to petitioner and his wife''s guarantee alone in respect of borrower Mr.Athinarayanan for his overdraft loan account no.3110040000020 without insisting to settle his other liabilities.

3. Though the petitioner, has contended that the bank has insisted to settle the other liabilities, there are absolutely no materials to substantiate the said averments. Except for the liabilities agreed upon, banks in normal circumstances do not initiate any action. Even taking it for granted that if the bank takes any action against the guarantee for other liabilities of the borrower, it is always upon to the petitioner to approach the Debts Recovery Tribunal for appropriate remedy.

4. In view of the above discussion, this Court is not inclined to issue any Mandamus as prayed for. Accordingly, this writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(AE)

\\True copy\\

Sub Assistant Registrar

To

1. THE DISTRICT COLLECTOR,
   MADURAI DISTRICT, COLLECTORATE,
   MADURAI.

2. THE BRANCH MANAGER,
   BANK OF BARODA, VIRUDHUNGAR BRANCH,
   VIRUDHUNAGAR.

3. THE DISTIRCT REVENUE OFFICER,
   COLLECTORATE, MADURAI.

+1cc to The Spl.Govt.Pleader, Sr.No.29783

rj2
akm/SAR-I/3p-5c/23.06.15

Order made in
W.P.(MD)No.9347 of 2015
10.06.2015