

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.44136 of 2016
and W.M.P.No.37970 of 2016

Mrs.D.Gowri ..Petitioner

versus

1. Indian Overseas Bank,
Rep. by its Manager / Authorised Officer,
Kanchipuram Main Branch,
Kanchipuram.
2. D.Mohan Raj
3. M.Dhanasekaran ..Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorarified Mandamus, to call for the records of the 1st respondent made in its proceedings demand notice dated 19.10.2016 and quash the same and consequently direct the 1st respondent to permit the petitioner and the borrowers to settle the Educational loan within a reasonable time as may be fixed by this Hon'ble High Court.

For Petitioner : Mr.M.Senthamizh Selvan

ORDER

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

Notice issued under Section 13(2) of the SARFAESI Act, 2002, sought to be quashed by the writ of certiorarified Mandamus is only a demand made by the 1st respondent Bank and the Hon'ble Supreme Court in Mardia Chemicals v. Union of India reported in AIR 2004 SC 2371 : 2004(4) SCC 311 has held that a notice under Section 13(2) would not give rise to a cause to challenge the same.

2. As per Section 13(3)A of the SARFAESI Act, 2002, if, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower: PROVIDED that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A.

3. In the light of the above decision and the statutory provision, instant writ petition challenging the demand notice dated 19.10.2016, issued under Section 13(2) of the SARFAESI Act, is not maintainable. Consequential prayer to the Indian Overseas Bank, Kancheepuram, the 1st respondent to permit the petitioner and the borrowers to settle the education loan within a reasonable time also cannot be granted.

4. Hence, the writ petition is dismissed. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
The Manager / Authorised Officer,
Indian Overseas Bank,
Kanchipuram Main Branch,
Kanchipuram.

SV(CO)
RS(19/01/2017)

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and
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