BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.[MD].No.24020 of 2016

and

W.M.P.(MD).No.17327 of 2016

M/s.City Builder,
rep. through its Managing Partner,
Mr.G.Sathish Kumar,
S/o.Gopal,
No.14, Kamarajar 3rd Street,
Chokkikulam,
Madurai. .. Petitioner

Vs.

1.The Reserve Bank of India,
Chennai.

2.The Chief Manager and Authorised officer,
Bank of India,
No.9, East Avani Moola Street,
Madurai. .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the 2nd respondent Bank to declare the classification of NPA dated 27.05.2016 with respect to the petitioner's loan account No.825065410000009 as illegal and consequently direct the 2nd respondent bank to declare all further proceedings with respect to the NPA dated 27.05.2016 as illegal.

For petitioner : Mr.M.Benazirbegam

For 2nd respondent : Mr.S.Rengasamy

ORDER

[Order of the Court was made by R.SUBBIAH, J.]

The present writ petition has been filed seeking a direction to the 2nd respondent Bank to declare the classification of NPA dated 27.05.2016 with respect to the petitioner's loan account No.825065410000009 as illegal and consequently direct the 2nd respondent bank to declare all further proceedings with respect to the NPA, dated 27.05.2016, as illegal.

2.1. It is stated in the petition that on 30.06.2014, the petitioner company had availed loan to the tune of Rs.10 crores from the 2nd respondent Bank for promoting and making constructions in the lands owned by it. As per clause 15 of the loan agreement, the loan amount was repayable in twenty four monthly installments of Rs.41,67 lakhs commencing from the twenty fifth month after the first installment. It has also been mentioned in the agreement that if the account continues to be overdrawn for a period of 90 days, the Bank may consider initiation of other action also as deemed fit by the Bank. According to the terms and conditions of the loan agreement, the petitioner has cooperated with the bank and paid nearly Rs.2 crores as interest during the period from June 2014 to March 2016. However, due to general recession in real estate, the project could not be completed within the stipulated time and the sale of houses constructed are pending. While so, on 06.07.2016 the 2nd respondent bank issued a notice calling upon the petitioner to pay a sum of Rs.10,66,88,471/- and as there is default in payment, they classified his account as Non Performing Assets (NPA).

2.2. It is also stated in the petition that even before completion of the prescribed period of 90 days for classifying the accounts as NPA, the 2nd respondent bank in violation of Section 2 (1)(o) of the SARFAESI Act, classified his account as NPA within 57 days from the date of last remittance of interest. Even then, the petitioner has approached the 2nd respondent Bank with two undated cheques for repayment of loan amount in One Time Settlement (OTS) basis, after a year. But, without the knowledge of the petitioner, the 2nd respondent Bank had presented one cheque given for a sum of Rs.2.70 crores, but the same was returned as "Drawers Signature Differs" and for "insufficient funds".

2.3. Following the demand notice, on 02.09.2016, the 2nd respondent bank has issued a possession notice under Section 13(4) of the SARFAESI Act. Assailing the possession notice dated 02.09.2016, the petitioner has already approached the Debts Recovery Tribunal, Madurai in S.A.No.363 of 2016 and the said application is pending. While so, the 2nd respondent Bank, without the knowledge of the petitioner, had presented another cheque for collection, but the same was also returned as "Insufficient funds". Though the petitioner is interested in repaying the amount in OTS basis, the 2nd respondent Bank is dragging the petitioner from pillar to post. Hence, the petitioner has come up with this Writ Petition for the aforesaid relief.

3.When the matter was taken up for hearing today, the learned counsel for the petitioner submitted that though an alternative remedy is available, the petitioner is entitled to file this petition under Article 226 of the Constitution of India, as there is gross violation of the statute. As per Section 2(1)(o) of the SARFAESI Act, if the account continues to be overdue for 90 days, the Bank could consider for initiation of any action. But, in this case, even before completion of prescribed period of 90 days, the 2nd respondent bank classified the petitioner's account as NPA and issued the demand notice and possession notice illegally and therefore, the present writ petition is maintainable and the proceedings initiated by the 2nd respondent Bank are liable to be quashed.

4. The learned counsel for the 2nd respondent Bank would vehemently oppose this petition stating that the petitioner has already approached the Debts Recovery Tribunal in S.A.No.363 of 2016 for the very same relief and having failed to obtain any interim order before the Debts Recovery Tribunal, the petitioner has approached this Court and therefore, the Writ Petition is liable to be dismissed.

5. When an effective alternative remedy is available, this Court cannot entertain the writ petition. Admittedly, the petitioner has already approached the Debts Recovery Tribunal as against the action initiated by the 2nd respondent Bank. Therefore, it is for the petitioner to work out his remedy only before the Debts Recovery Tribunal.

6.In view of the above, this Writ Petition is dismissed. However, the petitioner is at liberty to raise all the grounds stated in this petition before the Debts Recovery Tribunal. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/
Assistant Registrar(RTI)

/TRUE COPY/

Sub Assistant Registrar

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W.P.[MD].No.24020 of 2016
Dated: 16.12.2016