BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 18.01.2016
CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition (MD) No.963 of 2016
and
W.M.P(MD)No.768 of 2016

S.Kayalvizhi ... Petitioner

Vs.

1. The General Manager,
   Agricultural Credit Corporate Office,
   Avaishanmugam Salai,
   Rayapettai, Chennai 600 014.

2. The Deputy General Manager,
   Zonal Office, Indian Bank,
   Jenny Plaza, Trichy 620 001.

3. The Chief Manager and Authorized Officer,
   Indian Bank, Karur Main Branch, Karur.

4. The Manager,
   Indian Bank,
   Car Street Branch,
   No.30, Car Street,
   Karur District. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned communication dated 02.01.2016 issued by the 3rd respondent bank and quash the same and consequently direct the third respondent bank to consider the petitioner's explanation dated 26.12.2015 to the notice dated 05.12.2015 by the respondent bank and consider the offer of one time settlement of the petitioner.

For Petitioner : Mr.M.Ajmal Khan,
Senior Counsel for
M/S.H.Thayumanavaswamy

ORDER
(Order of the Court was made by V.RAMASUBRAMANIAN,J.)

The petitioner has come up with the above writ petition challenging the communication dated 02.01.2016 sent by the bank rejecting the reply given by the petitioner to a notice issued under Section 13(2) of the SARFAESI Act, 2002.

2.Heard Mr.M.Ajmal Khan, learned Senior Counsel for the petitioner.

3.The petitioner borrowed an agricultural term loan from the respondent bank. Her husband guaranteed due repayment of the loan. The petitioner also mortgaged her assets as security for the due repayment of the loan.

4.It appears that the loan was classified as a non performing asset from 31.10.2015. Thereafter, a notice under Section 13(2) of the SARFAESI Act, 2002 was issued on 05.12.2015 calling upon the petitioner to pay a sum of Rs.34,08,187/-, within 60 days failing which further proceedings will be taken. As a matter of fact, the period of 60 days from the date of Section 13 (2) notice itself has not expired.

5.The petitioner gave her response to the notice by way of reply dated 26.12.2015. In her reply, the petitioner has raised several contentions such as that the repayment of certain amounts has not been given credit to and that the insurance claims have also not been adjusted. In addition the petitioner has claimed that she has already proposed to settle the loan by way of one time settlement.

6.In response to the said explanation dated 26.12.2015, the Branch Manager gave a reply dated 02.01.2016. It is a very brief reply which reads as follows:-

> *"With reference to the above, we are unable to consider your request.*
>
> *Further steps under SARFAESI Act will be stopped, if your OTS offer is accepted by concerned Authority. Otherwise, we will be constrained to proceed with further steps under SARFAESI".*

7.Challenging the aforesaid reply, the petitioner has come up with the above writ petition.

8.At the outset, the above writ petition is not maintainable for several reasons. The first is that at the stage of a notice under Section 13(2), there is no cause of action for a borrower to come up before Court. The petitioner will have a cause of action only when the steps as contemplated under Section 13(4) of the Act are initiated. That stage has not come.

9.Moreover, the notice under Section 13(2) was issued by the authorized officer. The letter impugned in this writ petition was not issued by the authorized officer but by the Branch Manager. The petitioner has wrongfully construed the impugned communication as one in response to an explanation given to the notice under Section 13(2). Therefore, it is not even an order under Section 13(3)A for the petitioner to take advantage of on the ground of non mentioning of any reasons.

10.The third reason as to why the writ petition is not maintainable is that by the impugned communication, the respondent has stated that the application for One Time Settlement is separately under consideration and that further steps under the SARFAESI Act will be dropped if the One Time Settlement offer is accepted. Therefore, the petitioner cannot even have a genuine cause apart from a legal cause of action to come up against the impugned order. Hence, the writ petition is dismissed. However, it is open to the petitioner to raise all the points before the appropriate forum at the appropriate stage. No costs. Consequently, W.M.P.(MD)No.768 of 2016 is closed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. The General Manager,
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   Avaishanmugam Salai,
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2. The Deputy General Manager,
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   Indian Bank, Karur Main Branch,
   Karur.

4. The Manager, Indian Bank,
   Car Street Branch,
   No.30, Car Street,
   Karur District.

+ 1 CC TO M/S.H.THAYUMANAVASWAMY, ADVOCATE IN SR NO.2582

SMS
TE/SKS-RR/ : 09/02/2016 : 3P/6C

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