IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2017

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No. 7303 of 2017

R. Sandhya .. Petitioner

Versus

1. State Bank of India
   represented by its Branch Manager
   No.52/36, Gandhi Mandapam Road
   Kottur, Chennai - 600 085

2. State Bank of India
   represented by its NPA Manager
   No.82, DGS Dinakaran Salai
   6th Floor, High Gates Building
   Santhome High Road
   MRC Nagar, Chennai - 600 028 .. Respondents

Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorari to call for the records on the file of the respondent in proceedings nil and dated 21.03.2017 (date of auction 24.03.2017) and quash the same as illegal, incompetent and without jurisdiction.

For Petitioner : Mr. D.J. Venkatesan

For Respondents : Mr. P.D. Audikesavalu

ORDER

The petitioner calls in question the order dated 21.03.2017 of the respondent, in and by which the vehicle - Fiat Grand Punto bearing Registration No. TN 07-CF 9064 was brought for auction sale for the alleged non-payment of the instalment amount by the petitioner.

2. The learned counsel for the petitioner would mainly contend that the petitioner has purchased the car by availing loan from the respondents bank and the vehicle was delivered to him on 25.08.2016. The petitioner has paid the instalments for a period of three months between September, October and November 2016. Unfortunately, due to unemployment of the petitioner, he could not honour the payment for the month of December 2017. However, the learned counsel for the petitioner would contend that on 16.03.2017, the petitioner has paid a sum of Rs.63,000/- representing six months of the instalment amount, in the form of fixed deposit with the respondents bank.

Out of the sum of Rs.63,000/- the petitioner agrees that a sum of Rs.50,000/- shall be adjusted towards the loan amount and the balance shall be kept as fixed deposit with the bank. In such circumstances, according to the learned counsel for the petitioner, the respondents are not justified in bringing the vehicle for auction sale. The learned counsel for the petitioner would contend that as on date, the petitioner has no amount due and payable to the bank and in fact, he has remitted amount in advance towards the instalment amount. Therefore, the learned counsel for the petitioner prayed this Court to allow the writ petition and to direct the respondents to re-deliver possession of the vehicle to the petitioner.

3. The learned counsel appearing for the respondents would contend that admittedly, the petitioner has committed default in payment of the instalment amount and therefore, as per the norms of the bank, the vehicle was brought to public auction sale and it cannot be faulted with. Further, even according to the petitioner, he is not employed and therefore, it would be just and proper to direct the petitioner to link his salary savings account with the loan account with the respondents bank so that the bank would adjust the loan amount month after month from the salary to be remitted to the petitioner.

4. At this stage, the learned counsel for the petitioner would contend that the petitioner is ready and willing to uplink his salary savings account with the loan account maintained with the respondents bank and would file necessary documents to that effect with the respondents bank within a period of six months. However, the vehicle shall be ordered to be released to the petitioner inasmuch as he has already paid a sum of Rs.63,000/- out of which the bank shall adjust Rs.50,000/- towards the loan amount in future.

5. Having regard to the above submissions of the counsel for both sides, the petitioner is hereby directed to file an affidavit of undertaking to the effect that the sum of Rs.50,000/- out of Rs.63,000/- remitted by him by way of fixed deposit with the respondent bank shall be adjusted towards the loan account and the balance amount of Rs.13,000/- shall be retained as fixed deposit with the bank. Such an affidavit of undertaking shall be filed by the petitioner to the respondents bank within a period of one week from today. On receipt of such affidavit of undertaking, the respondents are directed to release the vehicle - Fiat Punto EVO bearing Registration No. TN 07-CF 9064 to the custody of the petitioner forthwith. It is made clear that the petitioner shall also furnish necessary documents to uplink his salary account with the loan account with the respondents bank within a period of six months faling from today failing which it will be open to the respondents bank to proceed further in accordance with law.

6. With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition Nos. 7963 and 7964 of 2017 are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1.The Branch Manager,
State Bank of India,
No.52/36, Gandhi Mandapam Road
Kottur, Chennai - 600 085

2. The NPA Manager,
State Bank of India
No.82, DGS Dinakaran Salai
6th Floor, High Gates Building
Santhome High Road
MRC Nagar, Chennai - 600 028

+1cc to Mr.P.D.Audikesavalu,Advocate sr.18259

+1cc to Mr.D.J.Venketesan,sr.18452

WP No. 7303 of 2017

ad(co)
ss(7/4/2017)