IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

Writ Petition No.27533 of 2016

W.M.P.No.23730 of 2016

P.Balachandar ... Petitioner

Vs

1. The Branch Manager,
   Indian Bank, Shollinganallur Branch,
   Vaikunth Govarathan Ground Floor,
   No.1, Kalaignar Karunanidhi Salai (OMR),
   Shollinganallur, Chennai 600 119.

2. The Authorised Officer,
   Indian Bank, Shollinganallur Branch,
   Vaikunth Govarathan Ground Floor,
   No.1, Kalaignar Karunanidhi Salai (OMR),
   Shollinganallur, Chennai 600 119. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of writ of Mandamus, forbearing the respondents their subordinates from in any manner proceeding with the notice dated 07.06.2016, issued under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, without considering and disposing of the representation of the petitioner, dated 25.04.2016, for the reschedulement of the loan accounts.

For Petitioner ... Mr.M.Devaraj

For Respondents ... Mr.S.M.Subbiah

O R D E R
(Order of the Court was made by S. Manikumar, J)

The present writ petition is for a Mandamus, forbearing the respondents, their subordinates, from in any manner, proceeding with the notice, dated 07.06.2016, issued under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, without considering and disposing of his representation, dated 25.04.2016, for reschedulement of the loan accounts.

2. It is the case of the petitioner that he has availed a sum of Rs.14,00,000/-, as housing term loan, from the Branch Manager, Indian Bank, Shollinganallur Branch, Chennai, 1st respondent herein, on 03.03.2011, agreeing to repay the same, on monthly instalment of Rs.18,400/- each. He has been regularly paying the said monthly installment, from the date of availing the loan. Subsequently, when the cost of the construction has increased, he has requested for additional facility of Rs.5,00,000/- and the same was sanctioned as home improvement loan on 25.01.2012, which has to be repaid in a equated monthly instalment of Rs.7,100/- each. Further, for the completion of house, he had requested an additional loan amount and a sum of Rs.9,00,000/- was sanctioned on 17.02.2014, which has to be repaid in monthly instalment of Rs.18,132/-.

3. The petitioner has further submitted that all the above loans were independently sanctioned, assigning independent account numbers, viz.,939942707, 6009443688 and 6199224077 respectively, for which, every month, he would have to pay a sum of Rs.43,642/- and he was regular in making payment. In the mean time, the Reserve Bank of India has issued a circular, granting re-schedulement of the housing loan, as well as, granting a moratorium period of one year. In a public interest litigation filed in W.P.No.39329 of 2015, praying for a Mandamus, directing the RBI to issue circular to all financial banks in Chennai, Kancheepuram and Thiruvallur districts, exempting the borrowers from paying the EMI for the next 6 months, due on the principal amount and also direction not to levy any penal interest for 6 months period, the Hon'ble First Bench of this Court, vide order, dated 04.02.2016, recording the relief packages mentioned in the counter filed by the Reserve Bank of India, closed the said writ petition. In the said order, in respect of housing loan reschedulement, moratorium and top-up has been specifically mentioned.

4. It is the further case of the petitioner that earlier, on 31.10.2015, he had given a representation to the 1st respondent, requesting him to club all the three loans into one and reschedule the payment, so that, monthly instalments can be reduced. Though the 1st respondent has acknowledged the same, no action was taken. Further representation, dated 25.04.2016, has been given, in person, stating that in view of the floods, he had incurred lot of other expenditures and commitments and therefore, based on the master circular issued by the RBI, requested the 1st respondent to reschedule the above three Housing loan, granting a moratorium period of one year, as per

the circular issued by RBI. Copy of the said letter was also forwarded to the Regional Manager.

5. The petitioner has further submitted that he is the principal borrower. The property stands in his name and he is not able to mobilise the entire sum of Rs.43,642/-, towards the repayment of the three loans. However, with great difficulty, he had been paying the dues, till April' 2016. However, the 1st respondent, without giving any proper details and without replying to his representation, dated 25.04.2016, has classified the loan account, as Non-Performing Asset and issued a demand notice, dated 07.06.2016, under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002, granting 60 days' time to pay the entire loan amount.

6. Apart from issuing the said notice, the respondents, through their Recovery Agents, are threatening to take coercive steps to take possession of the house property, by visiting the premises. Because of the threat caused by the respondents, the petitioner had paid a sum of Rs.68,600/- in the month of June' 2016 and Rs.61,500/- in the month of July' 2016. The respondents are not permitting him, to adjust the payment in one account, close the same and reduce the liability. On the other hand, the respondents are trying to snatch away the house property, for which, he had already paid a substantial portion towards interest and the principal amount.

7. On the basis of the above averments and inviting the attention of this Court to the order made in W.P.No.39329 of 2015, dated 04.02.2016, Mr.M.Devaraj, learned counsel for the petitioner submitted that as per the RBI guidelines issued, the petitioner is entitled to reschedulement and moratorium. According to him, act of the respondent, in not considering the representation of the petitioner, dated 25.04.2016, in the light of the order, dated 04.02.2016, passed by the Hon'ble First Bench of this Court and the RBI guidelines issued, is arbitrary.

8. Learned counsel for the petitioner further submitted that though the petitioner has expressed his difficulty and requested for the reschedulement of three loans, the respondents, without considering his request, has proceeded under the SARFAESI Act, 2002, which shows the perverse attitude of the respondent. Even though, the petitioner is willing to regularise the account, the respondents are acting arbitrarily, in not rescheduling the loan accounts, which they are bound to do, by virtue of the circular issued by the RBI.

9. Mr.S.M.Subbiah, learned counsel appearing for the respondents-Bank has made submissions, on the maintainability of

the writ petition.

Heard the learned counsel appearing for the parties and perused the materials available on record.

10. Properties are offered as secured assets to the loan availed. It is the case of the petitioner that he had already paid a substantial portion towards interest and the principal amount. For the demand notice, issued under Section 13(2) of the SARFAESI Act, the petitioner can make a representation or raise any objection, under Section 13(3A) of the said Act, before the respondents and the respondent shall consider same and if the respondents comes to the conclusion that such representation or objection is not acceptable or tenable, they shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection. The reasons so communicated or the likely action of the respondents, at the stage of communication of reasons, shall not confer any right upon the petitioner to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A. Only if any measures, taken under Section 13(4) of the Act, 2002, the petitioner can challenge the same, before the Debt Recovery Tribunal, under Section 17 and the Tribunal is competent to issue any directions.

11. Notice under Section 13(2) is only a demand made by the 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 notice under Section 13(2) would not give rise to a cause to challenge. However, as per Section 13(3A) 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.

12. In the light of the above decision and the statutory provision, writ of certiorari, cannot be issued to quash the notice under Section 13(2) of the SARFAESI Act 2002.

13. In the light of the above decisions, the writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

skm

To:
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Shollinganallur, Chennai 600 119.

+1cc to Mr.R.M.Subbiah, Advocate sr.2443

+1cc to Mr.M.Devaraj, Advocate sr.2152

Writ Petition No.27533 of 2016

lrs(co)
ss(7/2/2017)