BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.04.2017

CORAM:
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.(MD)No.7765 of 2017
and
W.M.P.(MD).No.6034 of 2017

M/s.Hotel Subam Residency,
3-1-54B, Cumbum Road,
Theni District 625 531.
Represented by Mr.J.Rabeek,
Managing Partner. ... Petitioner

Vs.

1.The Authorised Officer,
Syndicate Bank,
Regional Office,
Claret Plaza,
Melakkal Main Road,
Kochadai, Madurai 625 016.

2.The Senior Branch Manager,
Syndicate Bank,
Theni Branch,
No.1366, Periyakulam Road,
Theni 625 531. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus to call for the records relating to the impugned notice of the first respondent under Section 13(2) of SARFAESI Act in Ref.No.6215/SARFAESI/2016, dated 17.12.2016 and the impugned possession notice of first respondent dated 27.03.2017 issued under Rule 8(1) of the Rules, quash the same and consequently direct the respondent herein to re-schedule the repayment of loan installments from April 2017 in the wake of demonetization brought by the Union of India.

For Petitioner :Mr.M.Vallinayagam, Senior counsel for Mr.K.Appadurai
For Respondents : Mr.Pala Ramasamy

O R D E R

[Order of the Court was made by **T.S.SIVAGNANAM,J.**]

Heard Mr.M.Vallinayagam, learned Senior counsel appearing for the petitioner and Mr.Pala Ramasamy, learned Standing counsel appearing for the respondents Bank.

2. The petitioner is before this Court challenging the notice issued under Section 13(4) of SARFAESI Act.

3. Before we proceed further, we may clearly indicate that the writ Court ought not to entertain a writ petition challenging the notice issued under Section 13(4) of the SARFAESI Act, as the borrower has an effective alternative remedy before the Debt Recovery Tribunal, but what had made us to direct the respondent counsel to get instruction was owing to the fact that the respondent, in the impugned notice, have admitted that the petitioner had defaulted only four instalments. Therefore, we put a query to the learned Standing counsel for the respondent Bank as to whether it would be fair on the part of the Bank to declare the account of the petitioner as an NPA for having committed default of repayment for a period of four months, when it is a common knowledge that even long default periods have been ignored by various Banks and not resorted to the drastic step of declaring the constituent's account as NPA. Further more, the contention of the learned Senior counsel is that the reply given by the petitioner to the notice issued under Section 13(2) of the Act, was not considered and order has not been passed before issuance of notice under Section 13(4) of the Act. The learned Standing counsel on instructions while admitting that no order was passed on the petitioner's reply/representation dated 10.01.2017, would submit that the representation is not in the nature of an objection to the notice issued under Section 13(2) of the Act. We do not agree with the said submission of the respondent Bank as the representation apart from setting out other details requests for rescheduling the loan by granting 12 months grace time and also expresses certain difficulties faced by the petitioner as to why they were unable to pay the 4 installments. Therefore, for all practical purposes, the representation dated 10.01.2017 ought to have been treated as an objection to the notice issued under Section 13(2) of the Act. Therefore, we find that the respondent Bank should initiate fresh action in accordance with law. Further, in the mean time, it is always open to the petitioner to approach the respondent Bank with an offer to pay the arrears in instalments and to regularise the account.

4. In the light of the above, the writ petition stands disposed of, by directing the respondent Bank to withdraw the impugned notice under Section 13(4) of the Act and consider the petitioner's representation dated 10.01.2017 and pass orders on

merits and in accordance with law. On account of the above order, in the event, the matter is not settled and by fresh notice under Section 13(4) of the Act is issued, then the period during which this writ petition was pending till the issuance of fresh notice under Section 13(4) of the Act shall stand excluded while computing the period of limitation and the petitioner/ borrower shall not be entitled to take advantage of the same. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

/True Copy/

Sub Assistant Registrar

To

+1cc to M/S.K.Appadurai,Advocate,SR.54418
+1cc to Mr.PalaRamasamy,Advocate,SR.54512

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