BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 18.05.2017
CORAM:

THE HON'BLE Mr.JUSTICE M.V.MURALIDARAN
and
THE HON'BLE Mr.JUSTICE N.SESHASAYEE

W.P(MD)Nos.9270 and 9271 of 2017
and
W.M.P(MD)Nos.7045 to 7047 of 2017

G.Kanagambal .. petitioner in W.P.(MD)No.9270 of 2017

G.Sadaiyaraj .. petitioner in W.P(MD)No.9271 of 2017

Vs.

1.The Presiding Officer,
Debts Recovery Tribunal,
IV Floor, Kalyani Tower,
Melur Road,
Madurai.

2.The Authorized Officer,
Sundaram BNP Paribas Home Finance Limited,
Sundaram Towers,
46, Whites Road,
Chennai - 600 014. ... Respondents in both the Writ Petitions

Common Prayer: Writ Petitions are filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pursuant to the order passed by the first respondent in I.A.No.824 of 2017 in S.A.No.162 of 2017, dated 19.04.2017 and quash the same.

For petitioners : Mr.C.Lakshmanan

COMMON ORDER

(Order of the court was made by M.V.MURALIDARAN, J.)

These Writ Petitions have been filed by the petitioners challenging the order passed by the Debt Recovery Tribunal, Madurai in I.A.No.824 of 2017 in S.A.No.162 of 2017, dated 19.04.2017.

The facts of the case are as follows:

(i) The petitioners along with three others, obtained housing loan from the second respondent/Sundaram BNP Paribas Home Finance

Limited, to the tune of Rs.1,50,00,000/-. It is stated by the petitioners that the petitioners were prompt in repaying the loan amount by paying the E.M.I correctly. But, due to financial problems, beyond the control of the petitioners, the petitioners incurred heavy loss in their business, the petitioners were not able to repay the loan amount regularly. Hence, the second respondent, classified the petitioners' loan account as Non-Performing Asset(NPA) on 31.01.2015 and proceeded under SARFAESI Act.

(ii) Thereafter, the second respondent issued notice of demand, dated 01.05.2015 demanding a sum of Rs.1,36,657/- under Sections 13(2) of the Act. The petitioners after receipt of demand notice, approached the second respondent to re-schedule their loan account. But, without considering the petitioners' request and the payments made by the petitioners, the second respondent proceeded further and issued possession notice, dated 21.08.2015 under Section 13(4) of the Act and took symbolic possession of the properties.

(iii) Aggrieved by the said possession notice, dated 21.08.2015, the petitioners preferred an appeal in S.A.No.393 of 2015 before the first respondent. Pending the said appeal, the second respondent issued a Sale Notice on 03.01.2016 fixing the date of sale on 06.02.2016. Hence, the petitioners filed an application in I.A.Nos.243 of 2016 and 244 of 2016 for amending the S.A.No.393 fo2 015 and to stay the sale notice dated 03.01.2016. The first respondent vide its order dated 03.02.2016 was pleased to grant ad interim injunction not to confirm the sale till 05.04.2016 subject to payment of Rs.19,40,000/- before the first respondent directly on or before 03.03.2016 as first installment and another sum of Rs.19,40,000/- before the first respondent on or before 04.04.2016 as second installment. It is further stated by the petitioners that the petitioners have paid the first installment in time, however, they could not able to pay the second installment because of financial crisis.

(iv)In the meantime, the second respondent issued “E” Auction Sale Notice dated 07.03.2017 fixing the date of sale on 20.04.2017. Aggrieved over the same, the petitioners preferred an appeal in S.A.No.162 of 2017 along with an application for stay in I.A.No.824 of 2017. The first respondent vide its order dated 19.04.2017, granted interim stay not to confirm the sale till 20.06.2017 subject to payment of Rs.42,11,000/- before the first respondent directly on or before 19.05.2017 as first installment and another sum of Rs.42,11,000/- before the first respondent directly on or before 19.06.2017 as second installment. Aggrieved over the said order, the petitioners have come forward with this Writ Petition, with the aforesaid prayer.

3. We have heard the submissions made by the learned counsel for the petitioners and also perused the materials available on record.

4. Perusal of the impugned order shows that the petitioners granted an order of stay not to confirm the sale till 20.06.2017 subject to payment of Rs.42,11,000/- before the first respondent directly on or before 19.05.2017 as first installment and another sum of Rs.42,11,000/- before the first respondent directly on or before 19.06.2017 as second installment.

5. In view of the facts and circumstances, this Court is not inclined to set aside the order passed by the Tirbunal. However, we are inclined to modify the said order extending the time for payment.

6. Accordingly, this Writ Petition is disposed of directing the petitioners to pay Rs.42,11,000/- before the first respondent directly on or before 31.05.2017 as first installment and another sum of Rs.42,11,000/- before the first respondent directly on or before 30.06.2017 as second installment, till such time, sale shall not be confirmed. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar

To

1.The Presiding Officer,
Debts Recovery Tribunal,
IV Floor, Kalyani Tower,
Melur Road,
Madurai.

2.The Authorized Officer,
Sundaram BNP Paribas Home Finance Limited,
Sundaram Towers,
46, Whites Road,
Chennai - 600 014.

+2ccs to Mr.C.Lakshmanan, Advocate in SR.No.56681,56682

PM
AE/MR/SAR1/05.06.2017/3P/5C