IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.19494 of 2018
and WMP No.22936 of 2018

1. P.N. Selvam,
Proprietor, Sri Ranjith Traders,
Kancheepuram.

2. Mrs.S.Devi,
Prorietrix, Sri Devi Traders,
Rep. by Power Agent Mr.P.N.Selvam,
Kancheepuram.

3. T.P.Loganathan,
Rep. by Power Agent Mr.P.N.Selvam,
Tiruvallur.

4. T.P.Balu,
Rep. by Power Agent Mr.P.N.Selvam,
Tiruvallur.

... Petitioners

vs.

1. The Manager
State Bank of India
Kancheepuram.

2. The District Collector,
Kancheepuram District,
Kancheepuram.

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... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the first respondent

a) to deliver the mortgage deeds and the related documents in respect of all the six properties (Properties - A to F), to the respective petitioners; and consequently,

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b) to deliver the possession of the mortgaged properties in respect of which the first respondent bank is in possession (symbolic, physical or otherwise) viz., Properties - A, B and D, to its respective petitioners upon the payment, within three months, by me and by the second petitioner the 'due amount' as specified by the first respondent bank under his notice dated 11.04.2018 as may be modified by a calculation in tune with the spirit of the order passed by the Hon'ble Debts Recovery Tribunal - III, Chennai in S.A.No.02 of 2018 and S.A.SR.No.8680 9f 2017 on 28.06.2018 and upon the payment of the amounts of sale proceeds of the properties - A,C & E to the first respondent bank.

For Petitioners : Mr.G.S.Vivekanandan

ORDER

(Order of the Court was made by SUBRAMONIUM PRASAD, J)

Petitioners 1 and 2, approached the respondent bank and secured a loan for Rs.5.3 crores, by mortgaging six properties. The account of the petitioners were declared as Non Performing Asset [NPA]. Three properties, out of six properties which were mortgaged, were sold. When action was initiated, to sell the balance properties, the petitioners approached the Debts Recovery Tribunal-III, Chennai, by filing two petitions.

2. A perusal of the applications, as filed before the Debts Recovery Tribunal-III, Chennai shows that SASR No.8680 of 2017, was filed to set aside the sale certificate and SA No.02 of 2018, was filed challenging the sale notice. However the main prayer in both the applications, is only to restrict the bank from taking further steps to sell the properties. In the applications the petitioners have stated that they intend to settle the dispute.

3. The Debts Recovery Tribunal-III, Chennai by its order dated 28.06.2018 directed that since the appellants/petitioners herein intended to settle their dispute with the respondent bank amicably by negotiated settlement, they are permitted to do so on or before 31.07.2018. The tribunal further directed that in case the parties are unable to settle the loan account by that time, liberty is granted to the respondent bank to proceed further under the SARFAESI Act in accordance with law.

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4. It is the contention of the petitioners that they have made requests to the bank to settle the dispute by reducing the amount and interest. Finding that the bank has not been forth coming for settling the dispute, the petitioners have approached this Court by filing the instant writ petition, for the following reliefs.

> "a) to deliver the mortgage deeds and the related documents in respect of all the six properties (Properties - A to F), to the respective petitioners; and consequently,
>
> b) to deliver the possession of the mortgaged properties
> in respect of which the first respondent bank is in possession (symbolic, physical or otherwise) viz., Properties - A, B and D, to its respective petitioners --- upon the payment, within three months, "

5. A perusal of the writ petition shows that the petitioners want to invoke writ jurisdiction of this Court, to direct the bank to deliver the properties back, after the bank specifies the due amount, which needs to be calculated in a particular manner which the petitioners desire. Writ jurisdiction cannot be issued for this purpose.

6. Writ can only be issued, if the petitioners have a legal right and the authorities amenable to writ jurisdiction, have not performed their duties. Mere contractual obligation cannot be enforced, by invoking a writ jurisdiction and more particularly, when SARFAESI proceedings have been initiated. It is a settled law that High Courts, by invoking their powers under Article 226 of the Constitution of India, cannot interfere at every stage in the SARFAESI proceedings. The prayers in the writ petition cannot be granted. Hence, instant writ petition is dismissed. No costs. Consequently, connected, Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

1. The Manager
State Bank of India
Kancheepuram.

2. The District Collector,
Kancheepuram District,
Kancheepuram.

+3cc to Mr.G.S.Vivekanandan, Advocate, S.R.No.51197

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KJI(CO)
GSP(28/08/2018)

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