IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.08.2018
CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.19857 of 2018
and WMP No.23305 of 2018

1.M/s.Sri Devi Industries,
Rep. by its Proprietor Mr.V.Rajkumar,
No.1/67, Easwaran Kovil 2nd Cross Street,
Madipakkam, Chennai - 600 091.

2. Mr.M.Venkatachalam ... Petitioners

vs.

M/s.State Bank of India,
Asset Recovery Management Branch,
1st Floor, No.44, Eldams Road,
Teynampet, Chennai - 600 018 ... Respondent

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the respondent Bank to pass orders on the petitioners Compromise letter (Annexure I) dt. 13.03.2018 under One Time Settlement Scheme in respect to his cash Credit loan Account No.65003641052 with them so as to enable him to settle the entire compromise amount of Rs.1,23,00,000/- under One Time Settlement scheme to the respondent Bank.

For Petitioners : Mr.N.Nagu Sah

For Respondent : Ms.S.Sumathi

ORDER

(Order of the Court was made by S.MANIKUMAR, J)

M/s.Sri Devi Industries, has sought for a mandamus, directing State Bank of India, Asset Recovery Management Branch, Chennai, to pass orders on their Compromise letter (Annexure I) dt. 13.03.2018 under One Time Settlement Scheme in respect to the cash Credit loan Account No.65003641052, so as to enable them to settle the entire compromise amount of Rs.1,23,00,000/- under One Time Settlement scheme.

2. In ordinary circumstances, though this Court would not direct the respondent bank to pass orders on the petitioner's representation said to have been made under One Time Settlement, however, on the facts and circumstances of this case, it could be seen that petitioners have defaulted by a

day in making initial payment. Therefore, when the matter came up for admission, we directed Ms.S.Sumathi, learned standing counsel to take notice on behalf of the respondent bank viz., State Bank of India, Asset Recovery Management Branch, Chennai and respond.

3. Short facts leading to the writ petition, are as hereunder

(i) The petitioners have availed loan under Cash Credit A/c.No.65003641052 to the tune of Rs.1,90,00,000/- in aggregate from the Respondents bank periodically from the year 2005 by securing the 1st petitioner's two immovable properties and the 2nd petitioner stood as a guarantor in respect of the above loan account by securing one of his immovable property and that the petitioners have been making periodical payments towards the said debt, but however the respondent bank failed to give credit to the various payments made by him and failed to furnish the statement of accounts inspite of his repeated demands and request.

(ii) Due to sudden down fall in the business carried on by the petitioner, the same could not be carried on in a profitable manner but however he was making interest payments to the respondent bank without any default for about 10 years. In the meantime, the Respondent bank initiated recovery proceedings under SARFAESI Act. Being aggrieved the petitioners filed application under the SARFAESI Act and during the above proceedings made substantial payment. As of now, the proceedings initiated by him stands terminated. In all, the petitioners have paid the sum of Rs.2,03,47,178/- in total to the Respondent Bank towards interest alone i.e. the Respondent had collected more than 100% over and above the Principal amount. But the respondent bank made the above loan account as Non Performing Asset due to non payment dues on 31.03.2017.

(iii) In pursuant to the petitioners' offer to settle the entire dues under the above loan account under One Time Settlement Scheme, the respondent accepted his offer and sent their letter dated 19.09.2017 by informing him that as on 31.03.2017 there was a due of Rs.1,54,53,739/- and they are agreed to receive the one time settlement amount of Rs.1,23,62,991/- by paying the initial 5% amount of Rs.7,72,687/- on or before 31/10/2017 and should pay the balance amount within 6 months by further stating that petitioners could settle the balance amount within 31/12/2017, they would discount 10% of the OTS amount of Rs.1,23,62,991/- and thereby the petitioners have to pay only the sum of Rs.1,11,26,692/- as one time settlement amount if he could discharge the amount on or before 31.12.2017.

(iv) Accordingly the petitioner sent the initial amount of Rs.7,80,000/- by Cheque No.772510 dated 30.10.2017 drawn on

M/s.Indian Overseas Bank under Speed Post on 31.10.2017. But through their letter dated 23.11.2017, the respondent bank returned the above cheque stating that the said cheque was received by them on 01.11.2017 i.e., One day after the deadline of 31.10.2017.

(v) The respondent bank furnished the format for compromise, advising the petitioners to fillup and submit the bank format for compromise. Accordingly the petitioners have signed and submitted the format of compromise letter (Annexure 1) on 13.03.2018 to the Respondent bank offering to pay the sum of Rs.1,23,00,000/- as per their instructions i.e., Rs.24,60,000/- on or before 23/03/2018 and Rs.98,40,000/- on or before 30.04.2018. Even though the respondent bank received and acknowledged the receipt of the petitioners' compromise letter on 13.03.2018 itself, they failed to sent their acceptance till this date inspite of the petitioners' repeated request, eventhough petitioners were ready and willing to pay the one time settlement amount Rs.1,23,00,000/- as set out in his compromise letter dated 13.03.2018.

(vi) If the respondent would have informed about their acceptance petitioners would have settled the entire one time settlement amount of Rs.1,23,00,000/- by 30.04.2018 itself as per the above compromise letter.

(vii) But in the meantime petitioners understand that the respondent bank is taking steps to sell petitioners three immovable properties secured for the above loan account by holding E Auction Sale on 10.08.2018 as seen from their publication dated 10.07.2018 published in Dina Mani Tamil Newspaper and E-Auction notice dated 03.07.2018 by claiming imaginary sum of Rs.2,53,81,000/- in their E Auction notice dated 03.07.2018 and paper publication dated 10.07.2017 without any basis. Hence, petitioners have filed the instant writ petition for the relief stated supra.

4. Responding to the prayer sought for, Ms.S.Sumathi, learned standing counsel for the respondent bank submitted that the deadline for One Time Settlement, is over by 31.03.2018. A new One Time Proposal is issued by State Bank of India. She insisted that the petitioners be directed to pay a substantial amount towards discharge of debt.

5. Responding to the directions sought for, Mr.Nagu Sah, learned counsel for the petitioners submitted that a sum of Rs.12,30,000/- representing a little over the One Time Settlement amount between the parties, would be paid on or before 06.08.2018.

6. Submission of the learned counsel for the petitioners, is placed on record.

7. However, we make it clear that no opinion is offered on the validity of One Time Settlement, already expired. On payment of Rs.12,30,000/- as assured on or before 06.08.2018, e-auction sale notice dated 03.07.2018, shall be put off. We also make it clear that if payment as assured, is not paid within the stipulated time, order made in this writ petition shall stand rescinded automatically.

8. With the above observations and directions, writ petition is disposed of. No Costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

State Bank of India,
Asset Recovery Management Branch,
1st Floor, No.44, Eldams Road,
Teynampet, Chennai - 600 018

+1cc to Mr.N.NAGUSAH, Advocate, S.R.No.53345

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TM(CO)
SMI/06.08.2018