BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

W.P.(MD).No.3040 of 2018
and
W.M.P.(MD).No.3186 of 2018

K.M.Chandran ... Petitioner

Vs.

1.Tamilnad Mercantile Bank Limited,
Represented by its Branch Manager,
Namakkal Branch,
Namakkal District.

2.The Recovery Officer,
Debts Recovery Tribunal,
3rd & 4th Floor, 4/162, Kalyani Towers,
Near Meenakshi Mission Hospital,
Madurai-Melur Road, Utthankudi,
Madurai-625 107. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proclamation of sale dated 06.01.2018 concerning the petitioner's property in R.P.No.28 of 2017 in D.R.C.No.19 of 2017, R.P.No.29 of 2017 in D.R.C.No.20 of 2017, R.P.No.31 of 2017 in D.R.C.No.22 of 2017, R.P.No.32 of 2017 in D.R.C.No.23 of 2017, issued by the second respondent, and quash the same and further direct the second respondent to immediately bring the properties of the principal borrower's for sale.

For Petitioner : Mr.Om.Prekash
Senior Counsel
for M/s.Vastlaw Associates

For 1st Respondent : Mr.A.R.M.Ramesh
Standing Counsel

O R D E R

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

Heard Mr.Om Prakash, learned senior counsel for M/s.Vastlaw Associates, appearing for the petitioner and Mr.A.R.M.Ramesh, learned standing counsel appearing for the first respondent bank.

2. The petitioner has filed this writ petition challenging the sale attachment proclamation issued by the first respondent bank bringing the petitioner's property for sale for recovery of dues payable in respect of 4 loans availed by Tmt.C.Vasantha, Tr.P.Senthilkumar, Tr.P.Rathinam and Tmt.K.Tamilselvi. The fact remains that the petitioner and the borrowers are close relatives and the petitioner stood as a guarantor for all the four loans.

3. When the writ petition came up for admission on 15.02.2018, the learned senior counsel appearing for the petitioner submitted that the first respondent bank though has attached the properties of the principal borrowers, has not chosen to proceed for auctioning those properties for recovery, but targeted the petitioner, who is only a guarantor.

4. Considering the limitation of such submission, since it has been held that it is for the bank to choose against whom they have to proceed for recovery, the learned senior counsel submitted a offer to the first respondent bank that the petitioner is willing to settle 2 of the loan accounts within a time frame. A request was made that if the petitioner is able to settle 2 loan accounts within a time frame, then the first respondent bank may be directed to proceed against the principal borrowers in respect of other two loan accounts.

5. The said submission was placed on record. Mr.A.R.M.Ramesh, learned standing counsel appearing for the first respondent bank sought time to get instructions. At this juncture, it is useful to refer the order dated 15.02.2018, which reads thus:

> ''Heard Mr.Om Prakash, learned senior Counsel for M/s.Vastlaw Associates, appearing for the petitioner.
>
> 2.Though it is not disputed that as against the impugned sale proclamation, the petitioner has an effective alternative remedy under the Act, the learned senior counsel appearing for the petitioner would submit that a viable solution may be worked out so that the liablility of the borrowers can be settled and that the petitioner, being the guarantor, can be relieved from the liability. It is submitted that the Debt Recovery Tribunal in its order, dated 30.01.2017, while allowing the original applications filed by the first respondent bank directed the payment of the outstanding together with interest at the rate of 12% p.m. From 01.02.2010 till realization and also the cost, and directed the Recovery Officer to attach the property of the first defendant, the principal borrower. The grievance of the petitioner, who is the guarantor, is that though the bank has attached the properties of the

principal borrwoers, the bank has not brought those properties for salw, which should be natural consequence that has to be followed pursuant to the attachment, but chose to proceed against the valuable property of the petitioner, that too by bringing a portion of the property for sale and fixing the upset price at Rs.1.75 crores, when the liability to be recovered is only Rs.51,91,004/-. Though the learned senior counsel for the petitioner made this submissions on merits of the matter, on instructions, he would submit that in respect of the four loans which are covered in R.P.Nos.28, 29, 31 and 32 of 2017, the liability as quantified in R.P.No.32 of 2017 in respect of Tmt.C.Vasantha and 2 others will be settled well before the date of auction ie., 22.02.2018 and the liability as quantified in R.S.No.28 of 2017 in respect of Mr.P.Senthilkumar and another will be settled shorty thereafter, probably within three weeks from the date of auction. It is also submitted that the properties owned by principal borrowers in R.PNo.29/2017-Mr.P.Rathinam and another, and in R.P.No.31 of 2017-Mrs.K.Tamilselvi and others are also under attachment but not brought for sale.

3.Mr.A.R.M.Ramesh, learned counsel submits that he has instructions to get notice on behalf of the first respondent bank and seeks for a short indulgence to get instructions from the bank'.

6. Today, when the matter is heard, the learned counsel appearing for the petitioner has produced a Demand Draft drawn in favour of the Recovery Officer, Debt Recovery Tribunal, Madurai for a sum of Rs.9,59,849/- drawn on Federal Bank, Namakkal Branch, No. 877643 dated 19.02.2018. The purchaser of the Demand Draft is Tmt.C. Vasantha one of the borrowers, against whom the first respondent bank has filed R.P.32 of 2017.

7. The learned counsel for the petitioner submitted that they have secured the statement of accounts of the respective loan account of the Debt Recovery Tribunal, Madurai and mirror balance upto 22.02.2018 in respect of the loan availed by Tmt.C.Vasantha is Rs.9,59,849/- (Rupees nine lakhs fifty nine thousand eight hundred and forty nine only) and the Demand Draft has been purchased for the said amount.

8. The learned standing counsel appearing for the first respondent bank would submit that it may be true that mirror balance stood as on 22.02.2018 might have been shown as the above figure, but if there is any discrepancy or an additional amount is payable, the same should be directed to be paid. The learned counsel further submitted that if the petitioner settled one more loan as agreed by him, the bank will proceed against the principal borrowers in respect of remaining 2 loans and for a specified period, the

proceedings against the petitioner's property can be deferred.

9. The petitioner has offered to settle other loan availed by Mr.P.Senthilkumar, which is subject matter of R.P.No.28 of 2017 and requests time. We opine that two weeks time would be reasonable to settle the said loan.

10. In the light of the above, this Writ Petition stands disposed of, with the following directions:

(i)The first respondent bank is directed to accept the Demand Draft for Rs.9,59,849/- drawn in favour of the Recovery Officer, Debts Recovery Tribunal, Madurai, towards settlement of the loan availed by Tmt.C.Vasantha and if there is any discrepancy in the amount payable and if any excess amount is found payable the same shall also be paid. On full settlement of the said loan account, the dues payable by Tmt.C.Vasantha shall stand discharged and appropriate orders can be obtained by the petitioner from the Debt Recovery Tribunal, Madurai in respect of R.P.32 of 2017.

(ii)The petitioner is directed to settle the loan availed by Tr.P.Senthilkumar which is subject matter in R.P.28 of 2017 on or before 15.03.2018. If the petitioner complies the said condition namely, the settlement of the loan availed by Tr.P.Senthilkumar, the first respondent bank is directed to proceed against the principal borrowers in respect of the recovery proceedings in R.P.29 of 2017 and R.P.No.31 of 2017 by bringing their properties for sale, which have already been attached. The proceedings against the petitioner's property shall be deferred till 16th April 2018.

(iii)The first respondent bank is entitled to proceed further in accordance with law subject to the outcome of the above proceedings. No costs. Consequently, connected W.M.P.(MD) No.3186 of 2018 is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

TO
The Recovery Officer,
Debt Recovery Tribunal,
3&4th Floor,4/162 Kalyani Towers,
Near Meenakshi Mission Hospital, Uthangudi, Madurai-107.
+1CC to M/s.Vast Law Associates, SR.No. 49883
+1CC to Mr.A.R.M.Ramesh, Advocate, SR.No. 50117

W.P.(MD).No.3040 of 2018
and
W.M.P.(MD).No.3186 of 2018
20.02.2018

vsg/cm
AM/SV MMS/SAR 2/21.02.2018/4P/4C