BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.02.2018
CORAM:
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM
Writ Petition (MD).No.3256 of 2018
and
W.M.P.(MD).No.3423 of 2018

Mr.G.Muthuramalingam ... Petitioner

Vs.

The Authorised Officer,
Indian Overseas Bank,
Thenmalai Branch,
Sivagiri (Tk),
Tirunelveli District. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent in respect of Possession Notice issued in Thinamani Tamil news daily dated 29.12.2017 and Sale Notice issued in Dhina Thanthi Tamil news daily dated 08.02.2018 and quash the same.

For Petitioner : Mr.C.Jawahar Ravindran
For Respondent : Mr.N.Dilip Kumar
Standing counsel

O R D E R

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

Heard Mr.N.Dilip Kumar, learned Standing counsel for the respondent.

2. The petitioner, who is an Ex-serviceman, had availed Term Loan from the respondent Bank on 26.01.2014 to the tune of Rs.21,84,525/- for the purchase of machinery and to construct a factory building.

3. According to the petitioner, the repayment has to be made in 60 equal monthly instalments at Rs.26,668/- with interest at the rate of 10.25%. The first of such instalment commenced on 24.03.2014. The petitioner claims to have paid a lump sum of Rs.8,04,825/- in his loan account towards payment of future monthly instalments. The grievance of the petitioner is that the respondent Bank has not properly entered the amount paid by the petitioner in his loan account and has wrongly classified his account as Non-Performing Asset (NPA). The petitioner states that since he is an Ex-serviceman, eligible for interest subsidy as per the Bank Loan Interest Subsidy Scheme. The respondent Bank, on account of the default committed by the petitioner, had issued a demand notice

under Section 13(2) of the SARFAESI Act, 2002, dated 07.09.2017. The said notice computing the total dues payable as on 07.09.2017 is Rs.14,89,887/-. The petitioner submitted his reply to the notice. In the reply dated 27.10.2017, which has been received by the respondent as could be seen from the postal acknowledgment card. Subsequently, in terms of the provisions of the SARFAESI Act, the respondent Bank was required to pass a speaking order and communicate the same to the petitioner. However, the respondent Bank had issued the legal notice, instead which, in our opinion was not required. The respondent Bank was to address the petitioner to state as to how the obligations set out by him in the reply dated 27.10.2017 is justified or not. Furthermore, a Calculation Sheet clearly reflecting the payments made as to how they were adjusted to a loan account, when the default occurred, whether subsidy was given credit to the loan account etc., and the format should be in a manner whether the borrower would be able to easily see that as to how the calculation has been made. The respondent Bank without doing so, has issued the impugned sale notice fixing the date of sale as 12.03.2018.

4. Mr.N.Dilip Kumar, learned Standing counsel for the respondent submitted that the writ petition is not maintainable and in this regard, referred to the decision of the Hon'ble Supreme Court in *Agarwal Tracom (P) Limited v. Punjabl National Bank* reported in *(2018) 1 SCC 626* and in the case of *United Bank of India v. Satyawati Tondon* reported in *2010(8) SCC 110* and submitted that since the petitioner has an effective alternative remedy under the provision of SARFAESI Act, the writ petition is not maintainable. There could be no quarrel over the legal position as contented by the learned counsel for the respondent Bank. Yet, we are of the opinion that the respondent Bank should have sent a reply to the petitioner along with the representation, dated 27.10.2017 and enclosing the statement of accounts and without doing so, sending a legal notice was unqualified, since the petitioner do not approach the Lawyer to send a reply dated 27.10.2017. However, since the auction is scheduled only on 12.03.2018, we deem it appropriate that giving direction would meet the ends of justice.

5. It is made clear that the issue as to whether agreeable with the stand taken by the respondent Bank that the writ petition is not maintainable, when an auction under SARFAESI Act is initiated. However, on facts, we make a slight departure in this case and the same should not be treated as a precedent.

6. The learned counsel for the respondent Bank submitted that the petitioner has made factually incorrect statements and submitted that number of EMI is not 60, but it is 94 and the rate of interest is 10.25 % + 2%.

7. In the result, the writ petition is disposed of by directing the respondent Bank to send a reply to the petitioner's representation dated 27.10.2017, enclosing the statement of accounts

and communicate the same to the petitioner on or before 23.02.2018. It is therefore, thereafter open by the petitioner to work out his remedy in accordance with the provisions of the SARFAESI Act. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(W)

/True copy/

Sub Assistant Registrar

To

The Authorised Officer,
Indian Overseas Bank,
Thenmalai Branch,
Sivagiri (Tk),
Tirunelveli District.

+1cc to Mr.N.DILIP KUMAR,Advocate,SR.49484

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