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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P(MD)No.3955 of 2018
and
W.M.P(MD)No.4100 of 2018

K.Reji .. Petitioner

Vs.

The Authorized Officer/Chief Manager,
Bank of India, 885-887, Dasan Complex,
K.P.Road, Nagercoil, K.K.District. .. Respondent

PRAYER: Writ Petition is 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 auction sale notice dated 23.01.2018 issued by the respondent and quash the same and consequently directing the respondent to consider the proposal of the petitioner for One Time Settlement through her letter dated 22.02.2018 in accordance with law within a time frame as may be fixed by this Court.

For Petitioner : Mr.Y.Prakash
For Respondent : Mr.Pala Ramasamy

ORDER

[Order of the Court was made by T.S.SIVAGNANAM, J.]

Heard Mr.Y.Prakash learned counsel appearing for the petitioner as well as Mr.Pala Ramasamy, learned counsel, who accepts notice on behalf of the respondent.

2.The petitioner has questioned the sale notice issued by the respondent bank on account of the default committed by the petitioner in repayment of an educational loan, which had been availed for her daughter, for pursuing an engineering degree course. The petitioner had earlier approached the Debts Recovery Tribunal, Madurai, challenging the action initiated under Section 13(4) of SARFAESI Act, by filing an appeal in S.A.No.38 of 2017. In the said appeal, the petitioner sought for an interim order of stay in I.A.No.544 of 2017, which was considered by the Debts Recovery

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Tribunal and an order was passed on 22.03.2017, granting stay subject to the condition that the petitioner pays a sum of Rs.84,000/- on or before 21.04.2017 as first instalment and another sum of Rs.84,000/- on or before 20.05.2017 as second instalment. The petitioner failed to comply with the said direction. Consequently, the respondent bank has issued the impugned notice. There is no error in the procedure adopted by the respondent bank, in bringing the property for sale.

3.The learned counsel appearing for the petitioner would submit that the petitioner is finding it difficult to support the family, as her husband is no more and the loan amount itself is Rs.8,00,000/-. If the petitioner is ready and willing to pay the loan, then she has to approach the respondent bank and apply for settlement clearly indicating the terms of repayment and this submission cannot be considered by this Court, while deciding the correctness of the impugned sale notice. Therefore, we hold that the writ petition filed challenging the impugned sale notice, which is consequent upon the petitioner's default in complying with the interim order passed by the Debts Recovery Tribunal, Madurai, should necessarily fail.

4.For the above reasons, this writ petition is dismissed. However, it is open to the petitioner to approach the respondent bank requesting for a reasonable settlement proposal. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

+ 1 CC TO Mr.PALA RAMASAMY, ADVOCATE IN SR No. 51208

SMN
TE/KKR/SAR-2 : 08/03/2018 : 2P/2C

ORDER MADE IN
W.P(MD)No.3955 of 2018 and
W.M.P(MD)No.4100 of 2018
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