



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.03.2018

CORAM:

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

W.P(MD)No.4962 of 2018
and
W.M.P(MD)No.4952 of 2018

P.Radhakrishnan

... Petitioner

Vs.

1. The Authorised Officer,
Tamil Nadu Mercantile Bank Limited,
Theni Branch,
Door No.630, Nehruji Road,
Theni, Theni District.
2. The Presiding Officer,
Debts Recovery Tribunal,
Kalyani Towers, Uthankudi,
Opposite Meenakshi Mission Hospital,
Madurai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order, 05.05.2018 made in I.A.No.527/2018 in S.A.No.107 of 2018 on the file of the Debt Recovery Tribunal, Madurai Bench, quash the same.

For Petitioner : Mr.K.Appadurai
For R - 1 : Mr.N.Dilip Kumar

ORDER

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

Heard Mr.K.Appadurai, learned counsel appearing for the petitioner and Mr.N.Dilip Kumar, learned standing counsel appearing for the first respondent.

2.Even at the time, when the writ petition was entertained on 08.03.2018, we express our opinion that we could have dismissed the writ petition as not maintainable and relegate the petitioner to avail alternate remedy. However, taking into consideration the total outstanding amount, we passed the following order:-



"Heard Mr.G.Prabhu Rajadurai, learned counsel for Mr.K.Appadurai, learned counsel appearing for the petitioner.

2.The petitioner has challenged the order passed by the Debt Recovery Tribunal in a petition filed by the petitioner under Section 19(25) of the RDDBFI Act, praying to stay all further proceedings pursuant to the auction sale notice dated 14.02.2018. The Tribunal declined to interfere with the sale noting the conduct of the petitioner in not adhering to the earlier conditional order. As against the impugned order, the petitioner has an effective alternate remedy by way of appeal before the Debt Recovery Appellate Tribunal. Therefore, we would be fully justified in dismissing the writ petition as not maintainable and relegating the petitioner to avail the appeal remedy.

3.However, the learned counsel for the petitioner submitted that the total outstanding is only Rs.7,62,591/- and the petitioner is ready and willing to pay 50% of the dues and also settle the remaining outstanding. One more request made is to direct the respondent bank to consider waiver of penal interest so that the entire liability can be settled.

4.The learned counsel for the respondent submits that the prior conduct of the petitioner does not inspire confidence in the minds of the respondent bank. However, if the submission is bonafide, the respondent bank is willing to consider the same and accept the payment. It is represented by the learned counsel for the respondent bank that though the sale took place, there were no bidders.

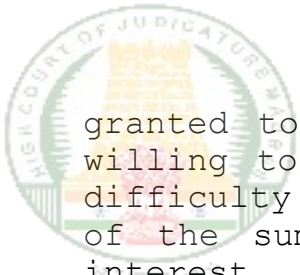
5.In this regard, the learned counsel for the petitioner requests time to get instructions in the matter. To prove the bonafide, the petitioner is directed to pay a sum of Rs.3,50,000/- on or before 21.03.2018.

6.List the matter on 23.03.2018."

3.The condition imposed by us, in the abovesaid order, has been complied with.

4.The learned counsel appearing for the first respondent/Bank submits that as on date, a sum of Rs.4,71,460/- is the total outstanding.

5.The learned counsel appearing for the petitioner submits that the first respondent/Bank may be directed to waive the penal interest and for the remaining amount, reasonable time may be



granted to pay the entire amount, as the petitioner is ready and willing to settle the amount, on account of the extreme financial difficulty to pay the entire amount in one single installment. Out of the sum of Rs.4,71,460/-, a sum of Rs.21,973/- is the penal interest.

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6. In the light of the undertaking given by the petitioner before this Court that he will pay the entire dues, if some relief and time are granted to the petitioner, we are inclined to pass the following order.

7. Accordingly, this Writ Petition stands disposed of by directing the first respondent/Bank to waive the penal interest of Rs.21,973/-. After waiving the said amount, the amount payable by the petitioner is Rs.4,49,487/-. This amount shall stand freezed as on date and the petitioner shall clear the entire amount of Rs.4,49,487/- on or before 31.05.2018. If the petitioner fails to comply with the order, the benefit of the order will not ensure in favour of the petitioner and the writ petition would stand automatically dismissed without reference to this Court and the first respondent is entitled to proceed with the recovery outstanding. It is made clear that this order shall not be treated as a precedent. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

1. The Authorised Officer,
Tamil Nadu Mercantile Bank Limited,
Theni Branch,
Door No.630, Nehruji Road,
Theni, Theni District.
2. The Presiding Officer,
Debts Recovery Tribunal,
Kalyani Towers, Uthankudi,
Opposite Meenakshi Mission Hospital,
Madurai.

+ 1 CC TO Mr.K.APPADURAI, ADVOCATE IN SR No. 57830
+ 1 CC TO Mr.N.DILIPKUMAR, ADVOCATE IN SR No. 57877

PS

TE/SKN-RSK/SAR-4 : 11/04/2018 : 3P/5C

W.P (MD) No.4962 of 2018
26.03.2018