

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Dated : 07.08.2018****CORAM :****THE HONOURABLE MR.JUSTICE T.RAJA****And****THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY****W.P(MD)No.17596 of 2018**

M.Joseph

... Petitioner

vs.

The Authorised Officer,  
Tamilnadu Mercantile Bank Ltd.,  
Tirunelveli Region,  
Tirunelveli District.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus for grant of extension of time against the order made in I.A.No.1762 of 2018 in S.A.No.248 of 2018 on the file of the Debts Recovery Tribunal, Madurai regarding to pay the 2<sup>nd</sup> installment amount on or before 31.07.2018.

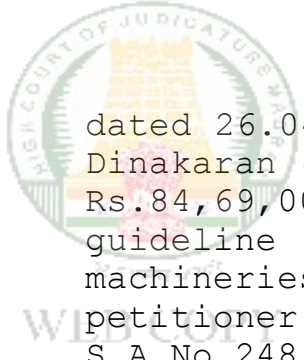
For Petitioner : Mr.R.Venkatesan

For Respondent : Mr.ARM.Ramesh

**ORDER****(Order of the Court was made by T.RAJA, J.)**

This writ petition has been filed seeking a writ of mandamus for grant of extension of time to make the second installment payment of Rs.8,41,000/- to the respondent bank.

2.The learned counsel appearing for the petitioner submitted that the petitioner is a borrower of term loan of Rs.48,52,000/- in the year 2015. Since then he has been regularly paying the installments. However, due to loss of business in the year 2017, he was unable to make the payment of installments, as a result, the respondent issued a demand notice on 23.06.2018 under Section 13(2) of the SARFAESI Act followed by possession notice, dated 07.10.2017 mentioning therein that there is a total due of Rs.72,03,027.92. Immediately thereafter, the petitioner has paid a sum of Rs.9,50,000/- requesting the respondent bank to regularise the loan amount. But the respondent bank issued the sale notice,



dated 26.04.2018 and published in the Tamil Vernacular News paper, Dinakaran on 01.05.2018 fixing the upset price of the property as Rs.84,69,000/-. As the respondent bank without considering the guideline value or the market value of the land, building and machineries and even the objections raised by the petitioner, the petitioner approached the Debts Recovery Tribunal, Madurai, in S.A.No.248 of 2018. Accepting the case of the petitioner that the respondent bank has proceeded to issue the sale notice without application of mind and not taking into account the guideline value or the market value of the land, value of the machineries, the Tribunal granted interim order of stay in I.A.No.1233 of 2018 in S.A.No.248 of 2018 on 17.05.2018 not to confirm the sale till 17.07.2018 subject to the payment of Rs.8,41,000/- on or before 16.06.2018 as a first installment and fixing a date as 16.07.2018 for the second installment for the same amount of Rs.8,41,000/-. Although the petitioner paid the first installment due, he was unable to make the second installment, since his father suddenly fell ill and got treatment at Surandai Selvam Hospital and Pavoochathiram Gunasekaran Hospital. As he required some more reasonable time to pay the second installment imposed by the Debts Recovery Tribunal, he filed extension petition before the Debts Recovery Tribunal in I.A.No.1762 of 2018 explaining the position that in view of the sudden illness suffered by his father, he was unable to make the second installment on or before 16.07.2018. The learned Tribunal also granted one more opportunity. Unfortunately, the petitioner was unable to mobilize the funds within the time extended by the Tribunal. However, he has submitted that now the petitioner has made the full payment of the second installment of Rs.8,41,000/- i.e. he has paid a sum of Rs.50,000/- on 19.07.2018; a sum of Rs.45,000/- on 21.07.2018; a sum of Rs.2,40,000/- on 22.07.2018; a sum of Rs.4,85,000/- on 03.08.2018 and a sum of Rs.21,000/- on 06.08.2018.

3.It is seen that the petitioner during the pendency of writ petition, has paid the entire amount of second installment. Since the petitioner has shown his *bona fide* in the aforementioned five dates by making various payments, this Court although agrees with the objections raised by the learned counsel for the respondent that the petitioner in any event should have approached the learned Debts Recovery Tribunal, as the petitioner has also availed the benefit of first extension, this Court, keeping in mind that in view of the sudden cardiac problem faced by the father of the petitioner, which could be seen from the discharge summary dated 15.06.2018 issued by the Government District Head Quarters Hospital, Thenkasi and another document dated 10.07.2018, on humanitarian consideration, accepts his belated payment because he has already paid the amount. Therefore, we direct the Debts Recovery Tribunal to take up S.A.No.248 of 2018, and pass appropriate orders on merits.



4.The Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (AS)

/True Copy/

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Sub Assistant Registrar (CS-I)

To

1. The Authorised Officer,  
Tamilnadu Mercantile Bank Ltd.,  
Tirunelveli Region,  
Tirunelveli District.

2.The Debts Recovery Tribunal, Madurai.

+1cc to Mr.R.Venkatesan, Advocate Sr.No.77674

+1cc to Mr.ARM.Ramesh, Advocate Sr.No.77658

RJ2

VB/RSK/SAR1/24.08.2018/3P/5C

**Order made in**  
**W.P (MD) No.17596 of 2018**  
**07.08.2018**