IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. Nos. 5557 and 5558 of 2019
and
W.M.P. Nos. 6326, 6327, 6328 and 6329 of 2019

N. Srinivasan ... Petitioner in both W.P.s

-vs-

The Chief Manager,
Canara Bank,
T. Nagar Branch,
Chennai - 600 017. ... Respondent in both W.P.s

Prayer in W.P. No. 5557 of 2019:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned undated notice issued by the Respondent in respect of Vehicle bearing No. PY 01 VB 2229, received on 23.02.2019, quash the same as arbitrary, illegal and without jurisdiction and consequently direct the Respondent to hand over possession of the seized vehicle bearing PY 01 VB 2229 forthwith to the Petitioner by considering his reply dated 24.02.2019.

Prayer in W.P. No. 5558 of 2019:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned undated notice issued by the Respondent in respect of Vehicle bearing No. TN 09 CH 2229, received on 23.02.2019, quash the same as arbitrary, illegal and without jurisdiction and consequently direct the Respondent to hand over possession of the seized vehicle bearing TN 09 CH 2229, forthwith to the Petitioner by considering his reply dated 24.02.2019.

For Petitioner : Mr. N. Manokaran for
Mr. R. Prabakar (in both W.P.s)

For Respondents: Mr. N.G. Durairajan
Standing Counsel (in both W.P.s)

COMMON ORDER

Heard Mr. N. Manokaran, Learned Counsel appearing for the Petitioner and Mr. N.G. Durairajan, Learned Standing Counsel appearing on behalf of the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner had availed various credit facilities from the T. Nagar and Sholinganallur Branches of the Respondent and the details of the same have been set out in the following self-explanatory tabular statement:-

Total outstanding and overdue of all loans

| S. No. | Nature of Loan | Account No. | Date of Loan | Loan amount (in Rs. Lakhs) | Date of NPA | Overdue / Arrears as on 19.06.2019 | Amount outstanding as on 19.06.2019 (in Rs.) |
|---|---|---|---|---|---|---|---|
| | In Individual Capacity | | | | | | |
| 1. | Vehicle Loan (Audi Car) | 0917603008120 | 29.11.2017 | 37.00 | 30.06.2018 | 291394.00 | 3410420.00 |
| 2. | Vehicle Loan (Hyundai Creta) | 0917603008103 | 12.01.2017 | 15.13 | 30.06.2018 | 72939.00 | 1178269.00 |
| 3. | Vehicle Loan (Hyundai i10) | 3411603000018 | 20.02.2015 | 6.20 | 30.06.2018 | 186972.00 | 312304.00 |
| 4. | Personal Loan | 3411741000108 | 25.01.2016 | 1.00 | 30.06.2018 | 28785.00 | 28785.00 |
| 5. | Credit Card | 5298700101103005 | 03.08.2015 | 4.00 | 30.06.2018 | 469518.00 | 469518.00 |
| | | | | | Total | 1049608.00 | 5399296.00 |
| | As Proprietor of M/s. Vivekanda Coffee Company | | | | | | |
| 6. | Cash Credit | 3411261000003 | 30.12.2014 | 40.00 | 31.03.2018 | 1034618.00 | 5003247.00 |
| 7. | Term Loan for Machineries | 3411766000003 | 20.01.2015 | 3.50 | 31.03.2018 | 00 | 175377.00 |
| | | | | | Total | 1034618.00 | 5003247.00 |

| S. No. | Nature of Loan | Account No. | Date of Loan | Loan amount (in Rs. Lakhs) | Date of NPA | Overdue / Arrears as on 19.06.2019 | Amount outstanding as on 19.06.2019 (in Rs.) |
|---|---|---|---|---|---|---|---|
| | As partner of M/s. Vivekanda Filter Coffee | | | | | | |
| 8. | Cash Credit | 3411261000006 | 31.12.2014 | 40.00 | 31.03.2018 | 100299.00 | 5036497.00 |
| 9. | Vehicle Loan (Mahindra Van) | 3411768000026 | 02.03.2015 | 4.90 | 31.03.2018 | 145439.00 | 408945.00 |
| 10. | Vehicle Loan (Bolero Maxi Truck) | 3411768000027 | 04.03.2015 | 4.20 | 31.03.2018 | 123740.00 | 123740.00 |
| 11. | Current account (over drawn due locker rent arrears due 20.03.2019) | 3411201000064 | | | | 28070.00 | 28070.00 |
| | | | | | Total | 397548.00 | 5597252.00 |
| | | | | | | | |
| | Total outstanding and overdue of all loans | | | | | 2481774.00 | 16175172.00 |

3. The Petitioner had hypothecated cars bearing registration nos. PY 01 VB 2229 and TN 09 CH 2229 to the Respondent for the vehicle loans bearing account nos. 0917603008120 and 0917603008103 respectively. The said loans are repayable in equated monthly installments and the grievance sought to be ventilated by the Petitioner in these Writ Petitions is that the Respondent has seized the aforesaid hypothecated vehicles despite having paid the monthly installments due within those stipulated time limits till then, and has issued notices dated 23.02.2019 calling upon the Petitioner to pay entire amount outstanding for the aforesaid loans at once, failing which it was informed that those vehicles would be sold in public auction on 26.02.2019. In that backdrop, these Writ Petitions have been filed challenging the aforesaid action of the Respondent.

4. When the matter came up for admission before this Court on 26.02.2019, considering the submissions made by the Learned Counsel for the Petitioner, the Respondent was directed not to proceed with the public auction till further orders.

5. The Respondent has filed Counter Affidavit dated 04.04.2019 justifying the seizure of the hypothecated vehicles and the impugned notices issued for bringing the same for sale in public auction explaining that though there may not have been default in paying the dues for the monthly installments of the vehicle loans, the Petitioner had admittedly committed default in respect of the other loans and in terms of the agreement entered between the parties, which is supported by the directives of the Reserve Bank of India, the vehicle loans also have to be treated as Non-Performing Assets resulting in recalling the entire amount outstanding in all the loan accounts.

6. In order to buttress that contention, reliance is made on the Circular dated 01.07.2009 issued by the Reserve Bank of India on Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances, which provides in clause 4.27 as follows:-

> "4.2.7. Asset Classification to be borrower-wise and not facility-wise:-
> i) It is difficult to envisage a situation when only one facility to a borrower/one investment in any of the securities issued by the borrower becomes a problem credit/investment and not others. Therefore, all the facilities granted by a bank to a borrower and investment in all the securities issued by the borrower will have to be treated as NPA/NPI and not the particular facility/investment or part thereof which has become irregular."

It is needless to recapitulate that such directives issued by the Reserve Bank of India have statutory flavour under Sections 21 and 35-A of the Banking Regulation Act, 1949, as held by the Hon'ble Supreme Court of India in Corporation Bank -vs- D.M. Gowda [(1994) 5 SCC 213]. It would be also necessary to refer to clause (7) of the agreements for the vehicles loans entered between the Petitioner and the Respondent, which reads as follows:-

> "7. The hypothecated Vehicles shall be the security to the Bank or monies due to it in this account and/or any other account as if the hypothecation is created for repayment of those other monies also."

It has been clearly demonstrated before this Court from the aforesaid materials borne out from the record that the contention of the Respondent for recalling the entire amount due under the vehicle loans despite having paid the equated monthly installments till the seizure of the hypothecated vehicles is justified and cannot be found fault.

7. Before proceeding further, it would be pertinent to mention that the Petitioner had on 21.06.2019 filed an affidavit before this Court undertaking to repay the amounts that have fallen due till then towards the installments in respect of each of the loans (including the vehicle loans) that he had availed from the Respondent so that all those accounts could be regularized for permitting the Petitioner to continue to repay the loans in installments as per the terms agreed at the time when the borrowings were made, but it has been brought to the notice of this Court today by the Learned Counsel for the Respondent that the Petitioner did not make payment of the overdue amounts for all those loans as assured by him. It is evident from such deplorable conduct of the Petitioner that he does not deserve any more indulgence from this Court in the exercise of discretionary powers under Article 226 of the Constitution.

8. Learned Counsel for the Petitioner then contended that the hypothecated vehicles could not have been seized by the Respondent without the intervention of the Court. In this context, it would suffice here to refer to the relevant clauses in the agreements for the vehicle loans entered between the Petitioner and the Respondent extracted below:-

> "6. The Hypothecated Vehicles shall be a continuing security for repayment of the ultimate balance due to the Bank (including interest, Bank charges, etc.,) even though the amount actually advanced by the Bank may have exceeded the sanctioned limit or the account may at some point of time be at credit by reason of the sums deposited by the Borrower or otherwise.
>
> ....
>
> 15. The Borrower shall permit the Bank, its Officers, servants and nominees to inspect the Books of accounts, Hypothecated Vehicles and its condition to satisfy themselves that the security is not impaired or diminished in any manner.
>
> 16. The Borrower shall, in the event of the Bank exercising its right of seizure and sale of Hypothecated Vehicles under these presents, deliver up the Hypothecated Vehicles to the Bank and co-operate with the Bank in the matter of such seizure, removal of the Hypothecated Vehicles elsewhere and sale thereof.
>
> ....

21. The Bank shall be entitled :-

a) to demand repayment of the amounts advanced by it and hereby secured, punctually on the due dates of payment or on demand, as the case may be;

b) to demand, at its option, repayment of the entire loan amount in a lump sum and forthwith in the event of the Borrower committing default to pay any one installment of principal or inerst on the due dates or ommitting any act or suffering any omission by which the security is impaired or likely to be impaired or in the event of the Borrower committing breach of any of the terms, conditions, covenants hereof or for any other reason considered by the Bank to be sufficient to call up the entire advance, and the Borrower shall comply with such demand.

c) the Borrower hereby undertakes that he shall use the amount only for the purpose of which it is sanctioned and shall not use the amount or any part thereof for any other purpose other than for which it is sanctioned. Further, the Borrower agrees that if the Bank suspects or has reason to believe that the Borrower has violated or is violating the undertaking, the Bank may recall the loan amount or any part thereof at once, not withstanding anything to contrary contained in this agreement or any other agreement.

d) In the event of the Borrower failing or neglecting to comply with the demand and to pay the amounts due to the Bank as aforesaid, the Bank is entitled to enter upon the premises in which the Hypothecated Vehicle is kept or believed to be kept, seize and take possession thereof or otherwise cause it to be sold in public auction or by private Treaty for recovery of the amounts due to it. The net sale proceeds of the Hypothecated Vehicle after defraying the expenses of seizure, storage, sale, etc., shall be appropriated by the Bank towards protanto satisfaction of the debt due to it as per these presents and any other debt owing by the Borrower to the Bank. The balance, if any, will be kept at the credit of the Borrower with the Bank and he shall be at liberty to draw the same. The account rendered by the Bank of the costs and expenses of seizure and sale shall be binding and conclusive upon the Borrower.

e) to recover the amounts due from the Borrowers personally or from any other security furnished by him of from his surety without having to recourse against the Hypothecated Vehicles. In case the Bank proceeds against the Hypothecated Vehicles and the sale proceeds thereof are insufficient to satisfy the whole of the amounts due to the Bank, the Bank shall be entitled or recover such balance from the Borrower personally."

Further in clause (xiii) of the Circular dated 24.04.2008 issued by the Reserve Bank of India on Mid-Term Review of the Annual Policy for the year 2007-2008 of Recovery Agents engaged by banks, it has been mentioned as follows:-

> "(xiii) Where banks have incorporated a re-possession clause in the contract with the borrower and rely on such re-possession clause for enforcing their rights, they should ensure that the re-possession clause is legally valid, complies with the provisions of the Indian Contract Act in letter and spirit, and ensure that such repossession clause is clearly brought to the notice of the borrower at the time of execution of the contract. The terms and conditions of the contract should be strictly in terms of the Recovery Policy and should contain provisions regarding (a) notice period before taking possession (b) circumstances under which the notice period can be waived (c) the procedure for taking possession of the security (d) a provision regarding final chance to be given to the borrower for repayment of loan before the sale/auction of the property (e) the procedure for giving repossession to the borrower and (f) the procedure for sale/auction of the property."

The Hon'ble Supreme Court of India in Charanjit Singh Chada -vs- Sudhir Mehra [(2001) 7 SCC 417] and Managing Director, Orix Auto Finance (India) Ltd. -vs- Jagmander Singh [(2006) 1 CTC 670], has in no uncertain terms recognized the right of a creditor to seize the security for the debt from the custody of the borrower in terms of the written contract between them. Viewed from this perspective, no exception could be taken to the impugned action of the Respondent in seizing the hypothecated vehicles from the custody of the Petitioner exercising such rights in terms of the written contract between them.

9. That apart, there does not appear to be any illegality, perversity, unreasonableness, unfairness or irrationality in the prudent and unbiased decision-making process of the Respondent for warranting interference in the matter. This Court is fortified in taking that view by the ruling of the Hon'ble Supreme Court of India in GRIDCO Limited -vs- Sadananda Doloi [(2011) 15 SCC 16], in which it has been aptly held as follows:-

> "39. A writ court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract. Having said that we must add that judicial review cannot extend to the Court acting as an appellate authority sitting in

judgment over the decision. The Court cannot sit in the armchair of the Administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances. So long as the action taken by the authority is not shown to be vitiated by the infirmities referred to above and so long as the action is not demonstrably in outrageous defiance of logic, the writ court would do well to respect the decision under challenge."

In the absence of finding any infirmity in the impugned action of the Respondent which is complained by the Petitioner, there does not appear to be any justification to grant any relief to the Petitioner in these Writ Petitions. After giving due intimation to the Petitioner, it would be open to the Respondent to further proceed for sale of the hypothecated vehicles in public auction in accordance with law to realize the amounts due from him.

10. In the upshot, the Writ Petitions are dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The Chief Manager,
Canara Bank,
T. Nagar Branch,
Chennai - 600 017.

+1cc to Mr.R.Prabakar, Advocate Sr.57758
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+1cc to Mr.N.G.Durairajan, Advocate Sr.57183

W.P. Nos. 5557 and 5558 of 2019

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srg 20/01/2020