IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 01.04.2019

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.29607 of 2018
and
W.M.P.Nos.34576 and 34578 of 2018

M/s.Southern Gold Private Limited,
Rep. by its Director Mr.Collins C.A.,
2/573-A1, Christopher Nagar,
Ancherry P.O., Thrissur 680 006.

...Petitioner

Vs.

1.The Chief Manager,
Bank of India,
Chennai Bullion Banking Branch,
6th Floor, Prasanth Real Gold Tower,
North Usman Road,
Chennai 600 017.

2.Federal Bank Ltd.
Ernakulam North Branch,
Banerji Road, Ernakulam North,
Cochin 682 018.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of certiorarified mandamus to quash the Recall Notice in Reference No.CBBB/RRT/2018-19 dated 03.11.2018 and directing the first respondent to consider the proposals dated 28.09.2018, 11.10.2018 and 01.11.2018 on merits.

For Petitioner : Mr.N.Venkataraman
Senior Counsel
for Mr.S.Muthuvenkataraman

For Respondent : Mr.R.Umasuthan for R1
Mr.S.Sathinarayanan for R2

ORDER

The petitioner is aggrieved against the proceedings of the first respondent dated 03.11.2018, wherein and whereby the petitioner was called upon to repay the balance outstanding plus the interest referred to in the said proceedings within seven days with an indication that any failure will drive the respondent bank to take steps which include crystallization of gold loan outstanding at ongoing rates before due dates and invocation of bank guarantees furnished on behalf of the petitioner, enforcement of mortgaged properties standing in the name of Mr.C.A.Collins and Mr.C.A.Raphy and further legal action to recover all its dues including enforcement of securities charged to the bank with or without the intervention of the Court. Consequently, the petitioner seeks for a direction to the first respondent to consider the proposals dated 28.09.2018, 11.10.2018 and 01.11.2018.

2. Heard Mr.N.Venkataraman, learned Senior Counsel appearing for the petitioner, Mr.S.Umasuthan, learned counsel appearing for the first respondent and Mr.S.Sathinarayanan, learned counsel appearing for the second respondent.

3.It is stated that the petitioner is a Company engaged in the business of gold which includes the purchase of imported gold and export of gold ornaments manufactured by the petitioner from out of the said mortgaged gold so purchased by them. It is further stated that the petitioner procures imported gold bullions from the RBI nominated agency M/s.Bank of India Bullion Branch, Chennai, the first respondent herein after paying appropriate customs duty. The first respondent is the Bank of India, has been extending the benefit of forward contracts to the petitioner since April 2013 and the petitioner was being extended the benefit of loan under the bank's Bullion Loan Scheme. It is stated that the loan is provided by the first respondent Bank of India under the Exim policy and in terms of Reserve Bank of India Circular dated 25.06.1999. It is further stated that as on date, the second respondent Bank has guaranteed to the first respondent on behalf of the petitioner a sum of Rs.55 crores under 9 numbers of bank guarantee. It is further stated that credit facility extended by the first respondent to the petitioner is also secured by equitable mortgage of land and buildings standing in the names of two directors of the petitioner Company and additional security by guarantees of the two directors as guarantors of the loan.

4. Though the affidavit filed in support of the writ petition narrates certain other facts and figures and various communications issued between both parties as well, this Court

is not inclined to go into all those averments to find out the correctness or otherwise of the same as well as the contentions raised by the respondents in their counter affidavit disputing the claim made by the petitioner, for the simple reason that it is evident and apparent that the figures referred to in the impugned proceedings as balance outstanding are disputed by the petitioner. In other words, according to the petitioner, the balance outstanding referred to in the impugned proceedings are not derived after reconciliation of the entire account and therefore, the actual figure has to be arrived at only after such reconciliation. Therefore, the crux of the contention raised before this Court is that the present recalled notice figuring those two disputed balance outstandings cannot be allowed to be proceeded further, without a reconciliation.

5. On the other hand, in the counter affidavit filed by the respondents, more particularly, at paragraph No.4, the respondent Bank sought to explain as that the figure arrived in the impugned proceedings are correct and actuals.

6.In fact, this Court on the few last hearing days, gave an opportunity to both parties to sit together and arrive at actual figure of outstanding, if there is a dispute with regard to the quantum referred to in the impugned proceedings, as it is seen that the petitioner is not totally disputing their liability and on the other hand, their grievance is only with regard to the quantum referred to in the impugned proceedings.

7. Needless to say that both parties should have utilised the opportunity given by this Court and arrived at the actual figure reflecting the balance outstanding payable by the petitioner. But they have failed to do so, despite such opportunity having been given to them by this Court. Both want to stick to their own stand. Under the above stated circumstances, this Court is not inclined to go into such disputed question of fact and decide as to which would be the correct figure of outstanding and whether the petitioner is entitled to the relief sought for in this writ petition, by exercising its discretionary jurisdiction under Article 226 of the Constitution of India. In view of the disputed question of fact, it is for the parties to work out their remedy before the appropriate forum by filing appropriate proceedings, as such disputed question of fact can not and need not be gone into in this writ proceedings. Accordingly, this writ petition is disposed of by granting liberty to the petitioner to work out his remedy before the appropriate forum by filing appropriate proceedings within a period of two weeks from the date of

receipt of a copy of this order. Till such time, the respondents are directed to maintain status quo as on today. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Manager,
Bank of India,
Chennai Bullion Banking Branch,
6th Floor, Prasanth Real Gold Tower,
North Usman Road,
Chennai 600 017.

2.Federal Bank Ltd.
Ernakulam North Branch,
Banerji Road, Ernakulam North,
Cochin 682 018.

+2cc to Mr.R.Umasuthan, Advocate sr.no.31473
+1cc to Mr.S.Muthuvenkataraman, Advocate sr.31433
+1cc to Mr.S.Sathinarayanan, Advocate sr.no.30963

W.P.No.29607 of 2018

nr 03/05/2019