

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2019

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.31023 of 2018
and W.M.P.Nos.36188 and 36190 of 2018

1.D.Kesavan
2.K.Manjula

...Petitioners

Vs

1.The Deputy Registrar of Co-operative Societies (Housing),
Vellore Region, Vellore-6.

2.C.1225, Arakkonam Co-op.Urban Bank Ltd.,
rep.by its Managing Director /Deputy Registrar
No.37, Kamarajar Salai,
Arakkonam, Vellore District.

...Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records pertaining to the impugned letter dated 02.11.2018 sent by the second respondent to the petitioners and quash the same.

For Petitioners: Mr.R.Neelakandan

For Respondents: Mrs.T.Girija, Government Advocate
for R1

Mr.L.P.Shanmugasundaram, Spl.GP
for R2

O R D E R

The case of the petitioners is that they borrowed a sum of Rs.10,00,000/- as mortgage loan from the second respondent bank by depositing the documents of the house property, in the year 1998. The petitioners are not able to repay the loan amount. Hence the second respondent is stated to have initiated recovery proceedings under Section 90 of the Tamil Nadu Co-operative Societies Act, in which an award was passed in 2004 for Rs.14,01,888/- and subsequently E.P.No.21/2015-2006 dated

24.03.2015 demanding Rs.45,25,370/- in total, out of which Rs.14,01,888/- was towards decree amount, Rs.31,18,445/- towards interest and Rs.5,037/- was towards other costs, was filed. Aggrieved by the same, the petitioners filed a writ petition before this Court in W.P.No.10324/2015 in which a final order has been passed on 03.11.2015. In the final order, it has been observed that the petitioners can approach the second respondent bank and submit a proposal to the bank clearly stating as to within what time they would settle the outstanding amount.

2.It is further stated by the petitioners that in spite of such order passed by this Court in the writ petition, without considering the same, the sale officer issued the auction notice dated 28.05.2018 fixing the auction date on 04.07.2018. It is also stated that the petitioners have filed a writ petition in W.P.No.14537 of 2018 challenging the auction notice, in which a final order has been passed on 18.06.2018 directing the petitioners to pay a sum of Rs.7,00,000/- to cancel the auction and the respondents therein were directed to negotiate with the petitioners for re-scheduling the loan based on the Government orders. Accordingly, the said amount has been paid by the petitioners, but without negotiating with the petitioners, another letter was sent to the petitioners on 09.07.2018 demanding them to pay a sum of Rs.43,78,781/- on or before 30.07.2018. Challenging the said proceedings, the petitioners have filed a writ petition in W.P.No.19250 of 2018 in which this Court passed a final order on 27.07.2018, quashing the order impugned therein and remitting the issue for fresh consideration by taking into account the Government orders granting waiver of interest. Thereafter, the petitioners made a detailed representation on 11.10.2018 to the second respondent and the same was rejected by way of passing the impugned proceedings dated 02.11.2018.

3.With the above background, the petitioners have come up with this writ petition to quash the impugned proceedings issued by the second respondent dated 02.11.2018.

4.Mrs.T.Girija, learned Government Advocate, takes notice for the first respondent and Mr.L.P.Shanmugasundaram, learned Special Govt.Pleader, takes notice for the second respondent.

5.During the course of arguments, the learned counsel for the petitioners has submitted that a direction may be given to the second respondent-bank to waive the penal interest imposed by them.

6.The learned Government Advocate as well as the learned Special Govt.Pleader appearing for the respondents have

submitted that the petitioners have not availed the concession announced by the Government in the Scheme and at this juncture no waiver or concession or One Time Settlement, could be considered.

7.At this stage, the learned counsel for the petitioners sought time to make arrangement for settling the outstanding amount to the second respondent bank.

8.In view of the above stated circumstances, this writ petition is not maintainable at this stage. A time of eight weeks from the date of receipt of a copy of this order is given to the second respondent bank for considering the case of the petitioners by providing opportunity to them to pay the outstanding amount and if no settlement is arrived at within that period, it is open to the second respondent bank to proceed further in accordance with law.

9.With the above observation, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

KM

To

1.The Deputy Registrar of Co-operative Societies (Housing),
Vellore Region, Vellore-6.

2.The Managing Director /Deputy Registrar,
C.1225, Arakkonam Co-op.Urban Bank Ltd.,
No.37, Kamarajar Salai,
Arakkonam, Vellore District.

+1cc to Mr.R.Neelakandan, Advocate SR.No.10582

+1cc to Mr.L.P.Shanmugasundaram, Advocate SR.No.11045

+1cc to Government Pleader SR.No.11871

W.P.No.31023 of 2018
and W.M.P.Nos.36188 and
36190 of 2018

SAI (CO)
GMY (27/02/2019)