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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD) No.6510 of 2019
and
W.M.P. (MD) No.5202 of 2019

1.N.Muthusamy
2.Thattangaruppi
3.Muthu Manikkam
4.Illavarasi

... Petitioners

-vs-

1.P.H.Vinoth Pandian,
Sole Arbitrator,
Nos.74 & 76 II & III Floors
Marshalls Road, Egmore,
Chennai - 600 008.

2.Branch Manager,
Equitas Finance Pvt. Ltd,
No.9-1/A, Jawahar 2nd Floor,
Bye-pass Road, Madurai-625 010 ... Respondents

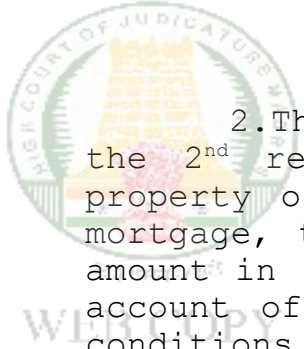
PRAYER: Petition is are filed under Article 226 of the Constitution of India, to issue a writ of certiorarified Mandamus, to call for the records of impugned order dated 16.02.2019 notice relating to the arbitration claim petition No.VP/SME/396/2018 of the 1st respondent and quash the same and permit the petitioners to settle their credit amount to the 2nd respondent as onetime payment.

For Petitioners : Mr.C.S.Ravichandran
For Respondents : Mr.B.Baskar for R2

O R D E R

[Order of the Court was made by S.S.SUNDAR, J.]

This writ petition has been filed for issuance of a writ of certiorarified Mandamus, to call for the records of the impugned notice dated 16.02.2019 relating to the arbitration claim petition No.VP/SME/396/2018 of the 1st respondent and quash the same and permit the petitioners to settle their credit amount to the 2nd respondent as onetime payment.



2.The petitioners have borrowed a sum of Rs.8,50,000/- from the 2nd respondent as loan way back in 2015. Though valuable property of the petitioners has been given as security by way of mortgage, the petitioners state that they could not repay the loan amount in time in view of the financial difficulties they faced on account of recession in the rice mill industry and other adverse conditions.

3.The petitioners themselves admit that they could not remit the instalments as per the agreement. Further, they state that they have filed a suit in O.S.No.10 of 2017 on the file of the District Munsif, Natham and obtained an order of injunction. However, the details are not furnished.

4.It is admitted that notice under Section 14 of SARFAESI Act was issued and revenue officials came on 08.08.2018 to take possession of the property and that the petitioners have filed SARFAESI appeal before the Debts Recovery Tribunal along with an application for interim stay. The petitioners also admit that they could not comply with the condition while getting the stay from the Debts Recovery Tribunal. It is in these circumstances, the Arbitrator appointed by the second respondent has issued the notice to the petitioners.

5.The notice impugned in the writ petition shows that the Arbitrator has fixed the date of hearing on 07.03.2019. Despite the fact that the petitioners did not appear on the earlier notice sent to them. Second notice has been issued fixing the date of hearing on 07.03.2019.

6.The learned counsel appearing for the petitioners submits that the petitioners have obtained stay and the stay is in force. He further states that if the arbitration proceedings is allowed to go on, it will be against the law as the petitioners would be put to double jeopardy. It is also submitted that there is no arbitration agreement.

7.The submission of the learned counsel appearing for the petitioners has no merits as the proceedings initiated under Securitization Act by the second respondent earlier is not a parallel proceedings and it is always open to the respondents to initiate proceedings for sale of the secured assets under the Securitization Act. The arbitration proceedings now initiated by the bank cannot be challenged before the Court by way of a writ petition as the petitioners have alternative and efficacious remedy available to them under law. It is open to the petitioners to raise an objection before the Arbitrator if there is no arbitration agreement. This Court cannot compel the second respondent to agree for one time settlement. The petitioners may approach the Bank for settlement.

<https://hcservices.ecourts.gov.in/hcservices/>

8.In view of the fact that the writ petition is not



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maintainable, this Court is not inclined to entertain this writ petition. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

+1cc to Mr.C.S.Ravichandran, Advocate, SR.No.

+1cc to Mr.B.Baskar, Advocate, SR.No.55460

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