BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.04.2019**

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.P(MD)NO.9606 OF 2019
and
W.M.P(MD)No.7552 of 2019

R.Murugeswari : Petitioner

.vs.

The Authorized Officer,
Indian Bank,
Cantonment Branch,
No.5, Williams Road,
Sree Naga Arcade,
Trichy. : Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondent to grant time for repayment of loan as per the terms and conditions mentioned in the loan agreement and stop the e-auction of Petitioner's property mentioned in the loan agreement will be held on 13.5.2019 on the basis of the Petitioner's representation, dated 6.4.2019.

For Petitioner : Mr.A.P.Muthupandian

For Respondent : Mr.Pala Ramasamy

O R D E R
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[Order of the Court was made by **K.KALYANASUNDARAM.,J.**]

Heard Mr.A.P.Muthupandian, learned counsel appearing for the Petitioner and Mr.Pala Ramasamy, learned Counsel appearing for the respondent Bank and perused the materials placed before this Court.

2.The prayer in the Writ Petition is to issue a Writ of Mandamus directing the respondent to grant time for repayment of loan as per the terms and conditions mentioned in the loan agreement and by considering the representation of the Petitioner.

3.According to the Petitioner, she availed loan of Rs.23,30,000/- on 15.10.2015 and as per the agreement, she was remitting the monthly installment of Rs.28,500/- till July 2018. However, due to some family circumstances, subsequent installments could not be paid regularly. Hence, notice under Section 13(2) of the SARFEASI Act was issued. Thereafter, the Petitioner paid Rs.1,30,000/- and when the Petitioner is having time till the end of 2030, now the property of the Petitioner cannot be brought for auction.

4.Per contra, the learned counsel for the respondent/Bank would argue that the present Writ Appeal itself is not maintainable and apart from that, the Petitioner had failed to give any reply to the notice issued under Section 13(2) and 13(4) of the SARFEASI Act. It is also stated that the Petitioner has transferred the right over the property to the third parties and hence, she has no interest to give any reply. It is further submitted that the Petitioner had also availed car loan from another branch of the respondent/Bank and in that account also, there is default in paying the instalment.

5.The Honourable Apex Court in the case of ***ICCI Bank Limited . vs. Umakanta Mohapatra reported in 2018 SCC Online 2349(Civil Appeal Nos.10243-10250 of 2018)***,has held as follows:

> *''3.Despite several judgements of this Court, including a judgement by Honourable Mr.Justice Navin Sinha, as recently as on 30.01.2018, in Authorized Officer, State Bank of Travancore .vs. Mathew K.C., (2018) 3 SCC 85, the High Courts continue to entertain matters which arise under the Scrutinisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(SARFAESI), and keep granting interim orders in favour of persons who are Non-Performing Assets(NPAs).*
>
> *4.This Writ Petition itself was not maintainable, as a result of which, in view of our recent judgment, which has followed earlier judgments of this Court, held as follows:-*
>
> *''18.We cannot help but disapprove the approach of the High Court for reasons already noticed in Dwarikesh Sugar Industries Limited .vs. Prem Heavy Engineering Works Private Limited.,(1997) 6 SCC 450, observing:-*
>
> *''32.When a person, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate Courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate Courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of*

granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops.'' ''

5.The Writ Petition, in this case, being not maintainable, obviously, all orders passed must perish, including the impugned order, which is set aside.

6.The appeals are allowed in the aforesaid terms.

7.Pending applications, if any, shall stand disposed of.''

6.Keeping in mind the decision of the Honourable Apex Court referred to supra,the Writ Petition is dismissed as not maintainable, with liberty to approach Debt Recovery Tribunal. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar(AS)

// True Copy //

Sub Assistant Registrar(CS)

To

The Authorized Officer,
Indian Bank,
Cantonment Branch,
No.5, Williams Road,
Sree Naga Arcade,
Trichy.

+1 CC to M/s.PALA.RAMASAMY, Advocate in SR-61940

W.P(MD)NO.9606 OF 2019
and
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vsn
PK/13.05.2019 : 3P/3C