



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.10.2019

CORAM:

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

and

THE HONOURABLE MRS. JUSTICE R. THARANI

W.P (MD) No. 21987 of 2019

and

W.M.P. (MD) No. 18745 of 2019

C. Muthukumar

.. Petitioner

Vs.

The Authorized Officer,
Indian Overseas Bank,
Chidambaram Nagar Branch,
No. 8, ground floor,
Chidambaram Nagar 1st Street,
Tuticorin.

.. Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari and Mandamus, to call for the entire records pertaining to the sale notice issued by the respondent dated 18.09.2019 and quash the same consequently forbearing the respondent from in any manner dealing with the property all that part and parcel of land and building measuring to an extent of undivided $\frac{1}{2}$ share in 1736 sqft at town survey No. 257/9 bearing door No. 9 D / 3 / 1 Thillainagar east, Thachanallur road block nor TS ward II Corporation ward 4, Madurai Road, Thirunelveli Corporation and District owned by C. Muthukumar with specified boundaries by interfering in peaceful possession and enjoyment of the petitioner or bring it into sale on 21.10.2019.

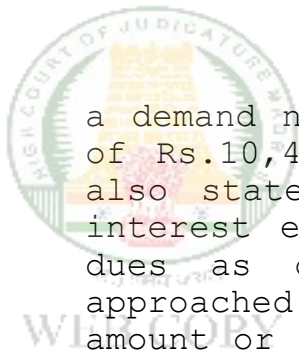
For Petitioner	: Mr. R. Devaraj
	for Ms. P. Bagyalakshmi
For Respondent	: Mr. Palaramasamy

ORDER

[Order of the Court was made by **T.S. SIVAGNANAM, J.**]

Heard Mr. R. Devaraj, learned counsel for Ms. P. Bagyalakshmi, learned counsel for the petitioner and Mr. Palaramasamy, learned counsel for the respondent. By consent on either side, this writ petition is taken up for final disposal.

2. The petitioner, who is the borrower of a business loan from the respondent Bank, has defaulted in repayment. Consequently,



a demand notice was issued on 07.06.2019, demanding a total amount of Rs.10,48,282.56, being a total dues as on 31.05.2019. Notice also states that any further delay will also result in levy of interest etc. The petitioner did not take any action to pay the dues as demanded in the demand notice dated 07.06.2019, nor approached the respondent Bank with an offer to pay a part of the amount or settle the entire loan by way of one time settlement. On account of the petitioner not doing so, the respondent Bank proceeded further and issued possession notice, dated 16.09.2019. This measure initiated by the respondent Bank was not challenged by the petitioner and he did not avail the remedies available to him under Section 17 of the SARFAESI Act. The respondent Bank has issued sale notice dated 18.09.2019, which is impugned before us.

3. According to the learned counsel for the petitioner the impugned notice is vitiated as it does not give appropriate mandatory period of thirty days from the date on which, the possession notice has been given.

4. On a reading of Rule 8 (6) of the Security Interest (Enforcement) Rules, 2002, we find that there is no such stipulation. The said Rule states that the authorized officer shall serve to the borrower a notice of thirty days for sale of immovable secured assets under Sub Rule 5. Therefore, the respondent Bank was required to serve a notice of thirty days for sale and there is no stipulation that there should be a gap of thirty days from the date of issuance of possession notice. Therefore, the ground, on which the impugned notice has been challenged, is not sustainable. Hence, we find no ground to entertain the writ petition.

5. The learned counsel for the petitioner submitted that the petitioner is doing a small time business of selling wedding cards and he is in a great financial distress and if a reasonable time is given, he will clear the entire loan.

6. The learned counsel for the respondent Bank submitted that if the petitioner approaches the respondent Bank, the authorized Officer of the Bank with reasonable offer and make a substantial ground payment, the request of the petitioner will be considered in accordance with the relevant regulation.

7. For the above reasons, while declining to grant the relief sought for, we grant liberty to the petitioner to approach the respondent Bank on 19.10.2019 and make substantial payment and if the same is done, the respondent Bank can consider the offer made by the petitioner for one time settlement. If this condition is not complied with, it is open to the respondent bank to proceed further in accordance with law.



8. This writ petition is dismissed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (AD-II)

Sub Assistant Registrar (CS)

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TO

The Authorized Officer,
Indian Overseas Bank,
Chidambaram Nagar Branch,
No.8, ground floor,
Chidambaram Nagar 1st Street,
Tuticorin.

+1CC TO MR.P.BAGYALAKSHMI, Advocate Sr. No. 92860

W.P (MD) No. 21987 of 2019
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AVS (CO)
TR (18.10.2019) 3P C