IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2020

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.No.1982 of 2020

1. M/s Giriguja Publications Private Limited
represented by its Director
Mr.S.Sundara Raman
No.56/21 First Avenue, Shastri Nagar
Adyar, Chennai 600 020

2. M/s GJ Multimedia India (P) Ltd.,
represented by its Director
Mr.S.Sundara Raman
No.56/21 First Avenue, Shastri Nagar
Adyar, Chennai 600 020 .. Petitioners

-vs-

Union Bank of India
Chamiers Road Branch
No.67, Chamiers Road
Chennai 600 018 .. Respondent

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the respondent bank herein to consider the petitioners' representation dated 11.11.2019 for revival of the One Time Settlement letter dated 14.11.2016 issued by the respondent bank to the petitioners herein.

For Petitioners:: Mr.A.Kalaivanan

For Respondent :: Mr.N.Venkateswaran

ORDER

(Order of the Court was made by M.SATHYANARAYANAN, J.)

The petitioners availed financial assistance from the respondent-Bank and in view of the defaults committed by them, proceedings were initiated under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, as amended from time to time, by filing original applications in O.A.Nos.639 & 640 of 2015.

2. The Debts Recovery Tribunal-II at Chennai had issued recovery certificates in D.R.C.Nos.240 & 251 of 2018 in O.A.Nos.639 & 640 of 2015, for a sum of Rs.2,33,22,817.77 as principal, a sum of Rs.54,11,570.08 as future interest at the rate of 9% per annum (simple) from the date of institution of OA on 9.9.2015 till the date of final order, and also ordered cost of Rs.3,18,261/-, in all aggregating to a sum of Rs.2,90,52,648.85 and Rs.21,78,16,022.22 as principal, Rs.5,92,52,169.75 as interest at the rate of 12% per annum (simple) from the date of filing of OA on 31.8.2015 till the date of final order and also ordered cost of Rs.3,18,261/-, in all aggregating to Rs.25,38,00,452.97, after deducting a sum of Rs.2,35,86,000 realized by the respondent-Bank, respectively.

3. The learned counsel for the petitioners would submit that the Tamil Nadu Mercantile Bank Limited, obtained an erroneous order of attachment in respect of their Adyar property and to raise the attachment, the petitioners herein as well as the respondent-Bank filed miscellaneous applications, and ultimately the order of attachment was raised and despite the petitioners having shown their bona fide by getting permission for sale of the immovable properties and also deposited the proceeds of over two crores and odd to the respondent-Bank, their genuine request for providing one more opportunity by way of one time settlement and also to enter into a tripartite agreement with the respondent-Bank for sale of their Adyar property, has not fructified, on account of the adamant attitude exhibited by the respondent-Bank. It is the further submission of the learned counsel for the petitioners that in this regard, a detailed representation dated 11.11.2019, for revival of the one time settlement letter dated 14.11.2016, had also been submitted and hence, prays for appropriate direction by permitting the petitioners to pay the remaining one time settlement amount of Rs.13 Crores together with interest from the date of cancellation of the OTS during February, 2018 and till the date of final settlement of OTS by way of installments.

4. Per contra, the learned standing counsel appearing for the respondent-Bank has invited the attention of this Court to the detailed counter affidavit of the respondent dated 10.2.2020 and would submit that permission was accorded to sell some of the immovable properties mortgaged to the Bank and the amount realised by way of the same, has also been appropriated and that apart, various payments made between 23.9.2016 and 15.11.2017 to an extent of Rs.2,23,76,000/- during the pendency of the OA's, were also duly credited to the first petitioner's loan account and it was also recorded in O.A.No.640 of 2015 by way of part satisfaction. It is the further submission of the learned counsel for the respondent-Bank that the amount settled by the petitioners was in pursuance of the acceptance of their offer to release and sell part of the mortgaged assets and hence, the petitioners cannot claim any advantage over the same.

5. Insofar as the one time settlement is concerned, the prayer made by the petitioners for revival/time extension, was already granted to them from 14.11.2016 to 31.3.2017 and further till 31.12.2017, and despite the two opportunities given by way of one time settlement, the petitioners did not comply with the same. It is also brought to the knowledge of this Court by the learned standing counsel appearing for the respondent-Bank that the petitioners filed M.A.No.252 of 2018 for almost a similar relief made in the present writ petition and the said M.A.No.252 of 2018 in D.R.C.No.251 of 2018, was dismissed on merits on 7.12.2018 and in the statutory appeal, the petitioners have failed to comply with the order of pre-deposit and so, the appeal was also rejected. It is the further submission of the learned counsel for the respondent-Bank that in respect of the Adyar property, there are various tenants and they are also initiating appropriate proceedings to stall the actual physical possession of the assets and the third e-auction sale notice dated 6.1.2020 has been issued fixing the date of e-auction on 12.2.2020 and if at all the petitioners are interested in bringing any third party auction purchaser, they can submit their e-bid before the expiry of the time fixed today, and would further submit that in the absence of any statutory obligation cast upon the respondent-Bank, the petitioners cannot request or plead to consider and dispose of their representation in a positive manner and hence, prays for dismissal of the writ petition.

6. This Court has carefully considered the rival submissions and also perused the materials placed before it. It appears that the petitioners have made every endeavour to settle the dues and the respondent-Bank had also accommodated them to certain extent by ordering release of certain immovable properties and the said properties were also sold and the proceeds were appropriated towards the dues and despite the same, dues are mounting, on account of further interest. It is seen from the counter affidavit filed on behalf of the respondent-Bank that the petitioners were afforded opportunities in the form of two one time settlements followed by extension of time and unfortunately, the petitioners are not in a position to generate funds to comply with the one time settlement.

7. However, the learned counsel for the petitioners, during the course of arguments, would submit that the third party auction purchaser, namely, Mr.S.Saravanakumar, a resident of No.2/10, Kunal Garden Street, Akkarai, Injambakkam, Chennai-115, has also offered to purchase the Adyar property by sending a communication dated 31.1.2020 to the Director of the petitioners companies and if appropriate direction for release of the Adyar property is issued by this Court, it would definitely fetch much more price than the price to be fixed through e-auction.

8. The learned standing counsel appearing for the respondent-Bank, in response to the said contention, would submit that the only mode permitted is on-line mode and if any relaxation is given for submitting the bid through off-line mode, it would negate the object and purpose of the sale and there is every likelihood of forming a cartel by the intending bidders, and if the petitioners are so advised, they may request Mr.S.Saravanakumar to participate in the said bid through e-auction.

9. This Court has carefully considered the said submissions. It is a well settled position of law that this Court cannot issue any positive direction directing the Bank to consider the one time settlement offer, unless the petitioners specifically point out that despite availability of such a scheme, the Bank was not inclined to accept the said request within the ambit of the said scheme. The contents of the counter affidavit would also disclose that the petitioners were offered OTS twice and one extension was also granted and that apart, they were also granted accommodation by way of release of some secured immovable properties, which were sold, and the amounts were also credited to the loan account of the petitioners.

10. Therefore, this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, cannot issue any positive direction for consideration of the OTS papers. However, taking into consideration of the fact that the petitioners are repeatedly making attempts to clear the dues, this Court directs the respondent-Bank to consider and dispose of the representation dated 11.11.2019, in accordance with law, within a period of two weeks from the date of receipt of a copy of this order, and communicate the decision taken, to the writ petitioners. The writ petition stands disposed of, accordingly. Consequently, W.M.P.No.2319 of 2020 is closed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To
1. The Chief Manager
Union Bank of India
Chamiers Road Branch
No.67, Chamiers Road
Chennai 600 018

+1cc to Mr.A.Kalaivanan , Advocate SR.No. 10296
+1cc to Mr.N.Venkateswaran , Advocate SR.No. 10575

W.P.No.1982 of 2020

A.SK(09/03/2020)