IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.10.2020

CORAM

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

WP.No.30545/2019 & WMP.No.30595/2020

1.Vijaya Lakshmi
2.Thulasi Anjaneyulu ..Petitioners

Versus

The Authorised Officer
State Bank of India
P.K.Puram Branch
No.51, Katpadi Gudiyattam Road
P.K.Puram Rusha Post
Katpadi Taluk, Vellore District. ..Respondent

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondent to disperse the amount of Rs.15,56,610/- [Fifteen Lakhs Fifty Six thousand and Six Hundred and ten only] along with 24% interest from 28.09.2016 within stipulated period.

For Petitioners : Mr.M.Sathish Kumar
For Respondent : Mr.C.P.R.Kamaraj

ORDER

(1)By consent, the writ petition is taken up for final disposal and is disposed of by this order.

(2)The petitioners availed the Housing Loan of Rs.10 Lakhs on 28.12.2005 from the respondent – Bank, viz., State Bank of India and for the due repayment of the loan, they also created an equitable mortgage. In lieu of the defaults committed by the petitioners/borrowers, the said account was classified as a Non Performing Asset and thereafter, action was initiated under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 [in short ''SARFAESI Act''] by issuing Notice dated 04.09.2015 under Section 13[2] of the SARFAESI Act which was followed by a fresh Notice dated 05.11.2015.

(3)The petitioners/borrowers did not comply with the terms of the Notice and therefore, Notice under Section 13[4] of the Act was issued on 07.01.2016 and it was followed by an E-Auction Sale Notice dated 21.03.2016 informing the auction sale to be held on 21.04.2016. The respondent – Bank proceeded with the auction sale on 21.04.2016 and one Mr.R.M.Muneer Basha became the successful bidder and the auction sale was also confirmed in his favour on 29.04.2016. The petitioners made a challenge to the said auction proceedings by filing Sa.NO.268 of 2016 and it was entertained and a conditional order of status quo was granted subject to the condition that the petitioners/borrowers shall remit a sum of Rs.5,00,000/- to the credit of the Loan Account by 10.05.2016 with default clause. When the SARFAESI Appeal was listed on 28.09.2016, the petitioners/borrowers had submitted two Demand Drafts for a sum of Rs.5,00,000/- and Rs.10,56,610/- respectively and the fact of handing over of the said Demand Drafts had also been recorded in the proceedings of the Debts Recovery Tribunal-III, Chennai in SA.No.268 of 2016. The Tribunal also recorded the fact that the petitioners/borrowers also undertook to remit the balance amount if demanded by the Bank from the date of confirmation of sale or in the alternative, to consider the plea of making an amicable settlement and with the above observation, the Tribunal had allowed the SARFAESI Appeal on 26.08.2016 vide order dated 28.09.2016.

(4) The respondent-Bank, aggrieved by the same, filed RA[SA] No.1 of 2017 on the file of the Debts Recovery Appellate Tribunal, Chennai, and taking note of the facts and circumstances, the DRAT, on technical grounds, had allowed the Revision.

(5) The petitioners/borrowers herein, aggrieved by the same, filed WP.No.18172 of 2018 and vide order dated 11.12.2018, the writ petition came to be dismissed.

(6) Thereafter, the petitioners/borrowers made a representation to the Respondent-Bank for refund of Rs.15,56,610/- and according to the learned counsel for the petitioners, despite such a request being made, no efforts have been taken by the respondent-Bank to return the said amount and therefore, this Court may pass appropriate orders directing the respondent-Bank to refund the same with reasonable rate of interest.

(7) Mr.C.P.R.Kamaraj, learned Standing counsel for the respondent-Bank would submit that though in compliance of the conditional order and in lieu of settlements, the petitioners/borrowers submitted two Demand Drafts, the same have not been encashed and immediately after the culmination of the proceedings, two Demand Drafts were taken for refund of the said amount and however, the petitioners/borrowers had refused to receive the same on the pretext that for the belated payment, interest to be paid and as such, the respondent-Bank is not at default and prays for dismissal of this writ petition.

(8) This Court has considered the rival submissions and also perused the materials placed before it.

(9) A perusal of the additional affidavit filed by the petitioners/borrowers dated 11.11.2019 would disclose that there were legal proceedings which ultimately ended in dismissal of WP.No.18172 of 2018 filed by them on 11.12.2018 and in the light of the pendency of the legal proceedings between 2016 and 11.12.2018 and that a sum of Rs.5 Lakhs was paid pursuant to the interim order of status quo granted by the Debts Recovery Tribunal in SA.No.268 of 2016 and that the petitioners/borrowers made a voluntary offer of remaining payment of the amount by way of redemption, this Court is of the considered view that for the said period, the petitioners/borrowers are not entitled for the interest.

(10) According to the learned Standing counsel for the respondent-Bank, the Demand Drafts were taken on 01.10.2020 and despite the fact that the writ petition filed by the petitioners came to be dismissed as early as on 11.12.2018, they should have taken immediate and necessary steps to refund the said amount and it appears that there is an unexplained delay.

(11) This Court can also take judicial notice of the fact that if the borrowers make any default in payment of amount, the Commercial Banks like the respondent-Bank are charging compound interest also and as such, in all fairness, they should pay the interest for the said belated payment.

(12) In the result, the writ petition stands disposed of and the respondent-Bank, while refunding the sum of Rs.15,15,610/- shall also pay an interest on the same at the rate of 9% per annum from 12.12.2018 to 30.09.2020 within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Authorised Officer
State Bank of India
P.K.Puram Branch
No.51, Katpadi Gudiyattam Road
P.K.Puram Rusha Post
Katpadi Taluk, Vellore District.

WP.No.30545/2019

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