BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 09.11.2020
CORAM:
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.13961 of 2020
and
W.M.P(MD)No.11626 of 2020.

P.L.Narayanan ... Petitioner

Vs.

1.The Authorised Officer,
Canara Bank,
Gnanaolivupuram Branch,
Arappalayam,
Madurai - 625 106.

2.The Chief Manager,
ARM Branch,
St.Marys Campus,
Circle Office 1st Floor,
East Veli Street,
Madurai - 625 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to extend the period of making initial deposit of Rs.1 crore on or before 30.09.2020 to 30.10.2020 being the pre condition for the sanctioning of one time settlement in the accounts of M/s.Navanna Textiles at No.11, Arappalayam Main Road, Vaigai Nagar, Madurai - 625 016 pursuant to the communication, dated 28.09.2020 issued by the 2nd respondent to petitioner and consequently not to proceed with further regard to E-auction proposed to be held on 07.10.2020 on the secured assets in pursuance of the paper publication, dated 06.09.2020 in Hindu Tamil Version forthwith.

For Petitioner : Mr.S.Palani Velayutham
For Respondents : Mr.N.Dilip Kumar,
Standing Counsel

ORDER

[Order of the Court was made by **B.PUGALENDHI, J.**]

This writ petition has been filed seeking a direction to the respondents to extend the time for making the initial deposit of rupees one crore on or before 30.09.2020 to 30.10.2020 being the pre-condition for the sanctioning of one time settlement and not to proceed with the e-auction proposed to be held on 07.10.2020 on the secured assets in pursuance of the paper publication, dated 06.09.2020 in Hindu Tamil Version forthwith.

2.The case of the petitioner is that he engaged in manufacturing of polyester yarns in the name and style of M/s.Navanna Textiles, Madurai. For developing the business, the petitioner approached respondent bank and availed mortgage loan to the tune of rupees seven crores on 06.02.2018. He has given certain other properties also as collateral security. After availing the loan he was running the business successfully. But due to the policy decision of the Government, the entire textile industry faced a lot of difficulties. As such the petitioner also suffered a huge loss and therefore, the petitioner could not repay the dues as per the terms and conditions of the bank. Due to non repayment of the loan amount, the loan accounts of the petitioner became non-performing assets on 30.07.2009.

3.While so, the respondent bank initiated action under SARFAESI Act and issued a demand notice dated 03.08.2019 to the petitioner to repay a sum of Rs.10,16,168.48 (Rupees Ten Crores Sixteen Lakhs One Hundred and Sixty Eight and Paisa Forty Eight) within a period of sixty days. Since the petitioner had not repaid the said demand, the respondent bank issued a sale notice on 17.02.2020.

4.As against the said sale notice the petitioner filed an appeal before Debts Recovery Tribunal [DRT] in S.A.No.168 of 2020 and the DRT on 26.03.2020 granted an order of interim stay on condition that the petitioner should pay a sum of Rs.1,09,00,000/- [Rupees One Crore Nine Lakhs] on or before 24.04.2020 as first instalment and another sum of Rs.1,09,00,000/- as second instalment on or before 26.05.2020 and further payment of Rs.1,09,000/- on or before 23.06.2020 as third instalment.

5.On 26.03.2020 the Government has imposed lock down due to Covid-19 Pandemic and therefore, the petitioner could not comply with the conditional order passed by the DRT. Subsequently, the respondents issued a paper publication on 06.09.2020 in a Tamil Daily that the secured assets of the petitioner would be e-auctioned on 07.10.2020. Though one time settlement was arrived at between the petitioner and the respondent bank, it was not given effect within the time stipulated. Therefore, the petitioner has approached this Court.

6.The petitioner has filed this petition contending that the respondent bank should extend the time limit for making repayment at least for 15 to 30 days, he would make the repayment, without fail and by extending the time for another 15 to 30 days there would not be any prejudice to the respondent bank.

7. We have heard the submissions made by the learned Counsel for the parties and perused the materials available on record.

8. Before venturing into the contentions raised by the learned Counsel appearing for the petitioners, we have to necessarily state that when there is an alternative remedy available, the writ petition is not maintainable. In this regard, we may usefully refer to the recent judgment of the Honourable Supreme Court dated **05.10.2018** in ***ICICI Bank Limited v. Umakanta Mohapatra***, **Civil Appeal Nos.10251 - 10265 of 2018** arising out of **SLP(C)Nos.16758 - 16772 of 2015**, wherein it is held as follows:

> *"Despite several judgments of this court, including a judgment by Hon'ble Mr.Justice Navin Sinha, as recently as on 30.01.2018, in Authorized Officer, State Bank of Travancore and Anr., vs. Mathew K.C., (2018) 3 SCC 85, the High Courts continue to entertain matters which arise under Securitisation 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).*
>
> *The 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 Ltd., vs. Prem Heavy Engineering Works (P) Ltd., and Another, (1997) 6 SCC 450, observing:-*
> >
> > > *"32. When a position, 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.*
> > >
> > > *The writ petition, in this case, being*

not maintainable, obviously, all orders passed must perish, including the impugned order, which is set aside."

9. In view of the recent judgment of the Honourable Supreme Court, we are of the opinion that the present Writ Petition is not maintainable and the appropriate remedy available for the petitioner is to file appeal before the Debts Recovery Appellate Tribunal and thus, the present Writ Petition fails.

10. In the result, this Writ Petition stands dismissed, however, granting liberty to the petitioner to work out his remedy in the manner konwn to law No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

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