



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.10.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.(MD) No.14289 of 2020

and

W.M.P(MD).No.11942 of 2020

L.Juliet

.. Petitioner

Vs

1. The Chief Manager and Authorized Officer,
UCO Bank [Secured Creditor]
Tuticorin Branch,
148-A, Elim Towers,
Devarpuram Road,
Tuticorin - 628 003.

2. Sekar Sundaram.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of Mandamus, to forbear the 1st respondent from proceeding further in consequence to the sale dated 29.09.2020 in respect of the petitioner's property, covered in the sale notice dated 26.08.2020 of 1st respondent and consequently, to direct the 1st respondent to receive the payments from the petitioner towards the outstanding dues and to close the loan account of the petitioner's brother namely L.Chandran by considering the petitioner's representation dated 05.10.2020.

For Petitioner

: Mr.R.Ravichandran

ORDER

[Order of the Court was made by
The Hon'ble Chief Justice]

Heard the learned Counsel for the petitioner.



2. This writ petition has been filed praying for an injunction to the effect that the respondent be restrained from giving effect to the auction of the property of the petitioner which was held on 29.09.2020, in proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

3. The petitioner was admittedly a guarantor to the loan taken by her brother. This is obviously in tune with the terms and conditions on which the loan was granted and on the settled principles of Section 128 of the Indian Contract Act, where the liability of the guarantor is coextensive. Consequently, such legal issues as to whether the petitioner can get any benefit or not can be examined by the Debts Recovery Tribunal, where the matter is stated to be pending, where the petitioner is said to have filed some appeal.

4. Learned Counsel for the petitioner has stated that this is virtually in the shape of a mercy petition to save the property of the petitioner, who otherwise is prepared to tender an offer for making good the amount due in installments within three months.

5. It is not for this Court to exercise any such jurisdiction, keeping in view of the law laid down by the Apex Court as long as in the case of **United Bank of India vs. Satyavati Tandon & Ors., (2010)8 SCC 110**, followed by a large number of decisions to that effect, where it has been held that in such proceedings the entertaining of a writ petition may not be permissible.

6. In view of the law laid down by the Apex Court, we are not inclined to entertain this petition without prejudice to the rights of the petitioner to move an appropriate application and seek her redressal before the Debts Recovery Tribunal under the provisions of SARFAESI Act and in the event of any proceedings are pending, it is obligatory on the part of the Tribunal to dispose of the matter concerned.

7. Accordingly, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

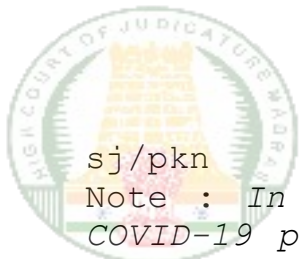
Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



sj/pkn

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

The Chief Manager and Authorized Officer,
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W.P. (MD) No.14289 of 2020

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SRK(CO)

KK(22.10.2020) 3P 2C