

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.01.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WP.No.1481/2021 & WMP.No.1671/2021

[Video Conferencing]

G.Naveen Prasath .. Petitioner

Versus

1. The Branch Manager
City Union Bank Limited
Hosur Branch, No.123,
Denkanikottai Road
Opp.to Sub Collector's Office
Hosur 635019.
2. The Authorised Officer
City Union Bank Limited
Credit Recovery & Management Department
24-B, Gandhi Nagar
Kumbakonam.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records on the file of the 2nd respondent made in C.O/REC/NPA/2020 dated 16.12.2020 and quash the same and consequently direct the respondents to consider the request made by the petitioner for One Time Settlement for the closure of the Loan Account Nos.147012002851141 permit the petitioner to get for OTS.

For Petitioner : Ms.Selvi George
For RR 1 & 2 : Mr.A.Karthikeyan
Standing counsel

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

- (1)By consent, the writ petition is taken up for final disposal and is disposed of by this order.
- (2)Mr.A.Karthikeyan, learned Standing counsel accepts notice on behalf of the respondents.

- (3)The petitioner claims to be a permanent resident of Hosur and was selected for MBBS course at J.J.M.Medical College at Karnataka for the Academic Years 2012-2018.
- (4)The learned counsel for the petitioner would submit that since the fee and other incidental expenses for admitting the petitioner, appeared to be exorbitant, he approached the respondents/Bank for financial assistance and it was sanctioned and accordingly, he availed a sum of Rs.10 Lakhs on 16.12.2013 repayable with interest and for due repayment of the loan, security documents also came to be executed including the creation of equitable mortgage in respect of an immovable property/asset in the nature of vacant land in S.No.25/1, Plot No.18, admeasuring to an extent of Acre 3.44 Cents at Hanumepalli Agraharam, Hosur Taluk, Krishnagiri District.
- (5)The learned counsel for the petitioner would submit that the petitioner has successfully completed the Course in the year 2018 and is preparing for NEET Examination for getting admission in the Post Graduate Course and alleging that he committed default in payment of the dues, the respondents have invoked the provisions of the SARFAESI Act and despite a fair offer made by the petitioner to settle the amount by way of One Time Settlement, the same has not been considered, especially, the fact of availment of educational loan and creation of security for due repayment of the loan. It is the further submission of the learned counsel that without taking note of the genuine prayer/request made by the petitioner, the 2nd respondent, vide impugned Notice dated 16.12.2020, has attempted to bring the secured assets for auction, which was proposed to be held on 27.01.2021 and prayed for appropriate orders.
- (6)The matter was listed for hearing on 25.01.2021 and on that day, Mr.A.Karthikeyan, learned standing counsel accepted notice on behalf of the respondents and on instructions, submitted that the repeated requests of the petitioner for One Time Settlement came to be considered and rejected and that the auction sale was also fixed on 27.01.2021. This Court, taking note of the said submission, directed the Registry to list the matter on 29.01.2021 [today] and accordingly, it is listed.
- (7)The learned standing counsel appearing for the respondents, on instructions, submitted that in the auction sale held on 27.01.2021, one Tmt.Laxmi Dhara, made a bid and it was found acceptance and the secured immovable asset was sold in her favour for a sum of Rs.30.10 Lakhs and further formalities would follow depending upon the deposit of the balance sale consideration by the successful auction purchaser.
- (8)The learned counsel for the petitioner would submit that the property is worth so much and it is sold for a very meager sum and the respondents-Bank, by adopting a merciless attitude, has

brought forth the sole immovable property for sale to collect the dues of educational loan availed by the petitioner without taking note of the economical conditions and prayed for interference.

- (9) This Court has considered the rival submissions and also perused the materials placed before it.
- (10) A perusal of the typed set of documents would disclose that the Settlement proposal submitted by the petitioner did not find acceptance and came to be rejected vide communication of the Assistant General Manager, Advances-Loan Review Department of the 2nd respondent-Bank dated 13.02.2020 as well as 29.09.2020 respectively and despite that, the petitioner is persisting with the same. The petitioner is also having an effective alternative remedy u/s.17 of the SARFAESI Act to challenge the Impugned Tender-cum-Auction Sale notice dated 16.12.2020 and without availing the same, has straight away invoked the jurisdiction of this Court.
- (11) The learned counsel for the petitioner advanced her arguments primarily based upon equity and requested this Court to invoke its equitable jurisdiction to come to the aid of the petitioner.
- (12) However, in the light of the above facts and circumstances and coupled with the settled legal position that the writ jurisdiction cannot be exercised on equitable consideration alone, this Court is not inclined to consider the plea made by the learned counsel for the petitioner.
- (13) In the light of the effective alternative remedy available, it is always open to the petitioner to invoke the same in the form of appeal before the competent Forum and as and when such an appeal is preferred, the jurisdictional Tribunal may entertain the same, if the papers are otherwise in order and give a disposal to the petition for interim relief as well as the main appeal as expeditiously as possible.
- (14) The writ petition stands dismissed subject to above observations. No costs. Consequently, the connected miscellaneous petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar

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//True Copy//

Sub Assistant Registrar

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To

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2.The Authorised Officer
City Union Bank Limited
Credit Recovery & Management Department
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+1 cc to M/s.Selvi George, Advocate Sr.No. 4704

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SSN(CO)
RMP(01/03/2021)



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