

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 1.3.2021

CORAM

THE HON'BLE MR.JUSTICE B.PUGALENDHI

W.P.No.5034 of 2021
and
W.M.P.No.5618 of 2021

1. M.Ambika
2. M.Prabakaran
3. Pushpa
4. M.Rajadurai Petitioners

vs.

The Co-operative Sub-Registrar,
Salem Officer (Non-Credit),
Central Co-op. Bank Ltd.,
Salem District. Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the records on the file of the Co-operative Sub Registrar, Salem Officer (Non-Credit), Central Co-op. Bank Ltd. Salem District, the respondent herein, in bringing the property for Auction vide his proceedings in Proc.No.E.P.No.192/2007-08 dated 18.1.2021 and quash the same as arbitrary, unreasonable, being violative of Tamil Nadu Co-operative Societies Act and consequently direct the respondent herein to restrain from bring the property from auction sale and to furnish the correct details of payment dues and permit the petitioner to repay the amount in monthly installments.

For Petitioners : Mr.A.R.Suresh

For Respondent : Mr.L.P.Shanmugasundaram,
Special Government Pleader

ORDER

One Mani, husband of the first petitioner and father of the other petitioners, had availed a loan from the respondent Salem Central Cooperative Bank in the year 2001 by pledging his house property. Subsequently, he died in the year 2010 leaving these petitioners as legal heirs. The petitioners were not aware of

the said loan transaction of Mr.Mani with the Central Cooperative Bank and in the meantime, the Bank has proceeded against the house property and issued the Auction Notice to the petitioners. The said Auction Notice dated 18.1.2021 is under challenge in this writ petition.

2. As per the Auction Notice, the petitioner's are due to pay a sum of Rs.13,78,014/- towards principal and interest for the said loan availed by the said Mani. The petitioners claim that due to the sudden demise of Mr.Mani, the loan amount was not paid by the petitioners and they were also not aware of the loan transaction Mr.Mani had with the Bank.

3. Mr.A.R.Suresh, learned counsel for the petitioner submits that the petitioners are willing to settle the issue by paying the outstanding amount provided they are given some breathing time. He has also filed an Affidavit of undertaking contending that the petitioners would pay a sum of Rs.3,00,000/- today itself i.e., on 1.3.2021 towards the outstanding amount and another sum of Rs.3,00,000/- on or before 31.3.2021 and seeking for some more time to pay the balance amount in equal monthly instalments.

4. Mr.L.P.Shanmugasundaram learned Special Government Pleader appearing for the Respondent Bank strongly objected the same by contending that the loan was availed by the said Mani in the year 2001 and the auction proceedings has been initiated, after giving a long passage of time and the auction is scheduled to be conducted today.

5. This court paid its anxious consideration to the rival submissions of the learned counsel for the parties.

6. It appears that the first petitioner's husband and the father of the other petitioners had availed a loan without the knowledge of the petitioners in the year 2001 and also died due to some ailments in the year 2010. Though the petitioners claim that all of a sudden, the respondent bank has brought their house property which has been mortgaged with the respondent bank for auction, without disputing the loan transaction, they have come forward to settle the outstanding amount and to give a quietus to the issue and to show their bona fide, they are ready to pay a sum of Rs.3,00,000/- today itself and another sum of Rs.3,00,000/- on or before 31.3.2021, but, they only require some time to pay the balance amount in equal monthly instalments.

7. Therefore, recording the affidavit of undertaking filed by the petitioners, this writ petition is disposed of and the petitioners are permitted to pay a sum of Rs.3,00,000/- today itself and to pay another sum of Rs.3,00,000/- on or before

31.3.2021 and shall pay the balance outstanding amount @ Rs.1,00,000/- per month commencing from 1st April 2021 till they clear the entire dues. On payment of the initial amount of Rs.3,00,000/-, the respondent shall defer the proposed action as per the impugned notification. It is made clear that based on the affidavit of undertaking alone, this concession is shown to the petitioners and if they fail to comply with any part of the affidavit of undertaking, it is always open to the respondent to proceed with the auction. No costs. The connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ssk.

To

The Co-operative Sub-Registrar,
Salem Officer (Non-Credit),
Central Co-op. Bank Ltd.,
Salem District.

+1cc to M/s.A.R.Suresh, Advocate Sr.12498

W.P.No.5034 of 2021

srg 02/03/2021

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