IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.01.2021

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THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

WP.No.6605 of 2020
and W.M.P.No.7827 of 2020

1.M/s.Sri Venkateswara Associates
rep.by its Sole Proprietor Mr.V.Venkateswarlu,
5-3 Ist Floor Mullai Street,
Dhazarathapuram,
Saligramam, Chennai 600 093.

2.Mr.V.Venkateswarlu .. Petitioners

Versus

1.The Chief Manager,
Indian Bank,
Jafferkhanpet Branch,
119/1, Zenofer Tower,
jawaharlal Nehru Salai,
Jafferkhanpet, Chennai 600 083.

2.The Zonal Manager,
Jafferkhanpet Branch Head
Indian bank,
Second Line Beach road,
Paris Chennai 600 001. .. Respondents

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Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the first respondent Bank to recalculate simple interest at the rate of 6% per annum pertaining to the first petitioner SME Loan Account No.6074920042 with effect from the NPA date of 01.12.2014.

For Petitioners : Mr.B.K.Grirish Neelakantan
For Respondents : Ms.S.R.Sumathy

ORDER

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

The 1st petitioner claims to be a Micro, Small, Medium enterprises and engaged in Real Estate business including land acquisition, construction, marketing and sales. The 1st petitioner has availed OCC INDSME secure scheme facility to a limit of 70 lakh on 30.10.2013 and the 2nd petitioner had availed an Home Loan facility to a limit of Rs.25 lakh on 11.05.2012 from the 1st respondent Bank. For the prompt repayment of loan, equitable mortgage in respect of three properties at Saligramam, Madhavaram and Thirumullaivoyal were created and the petitioners would state that in the light of sudden and abnormal increase in the prices of the land and construction materials, the 1st petitioner had approached the respondent Bank to enhance the facility to a limit of 90 lakhs and it was sanctioned from 07.04.2014 and thereafter the 1st petitioner had availed the enhanced limit of Rs.89,88,186 on 23.04.2014.

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Thus, as on 31.11.2014, the 1st petitioner has availed SME loan amount of Rs.84,41,762/- and the 2nd petitioner has availed the Home Loan of Rs.21,90,977/-. In view of the defaults committed by the petitioners, the assets were classified as 'Non Performing Assets' (NPA) on 01.12.2014, which according to the petitioners is contrary to the Reserve Bank of India guidelines.

2. The learned counsel appearing for the petitioners would submit that in the light of the guidelines issued by the Reserve Bank of India, all Banks were protected while classifying the account as 'Non Performing Asset', especially MSME units and as to the viability of the unit, it shall be done not later than three months from the date of classification of the account as NPA and provide them with full rehabilitation package within 6 months thereon to make it potentially viable and despite that the respondent Bank proceeded further and issued a Demand Notice dated 12.01.2015, under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, calling upon the petitioners to pay a sum of Rs.85,92,601/- and Rs.22,09,833/-, respectively, together with interest from 31.12.2014. The petitioners on receipt of the said notice had deposited a sum of Rs.8.19

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lakhs thereafter and however, the respondent Bank proceeded further and issued further Demand Notices.

3. The learned counsel appearing for the petitioners would submit that though the petitioners have submitted a request for One Time Settlement proposal, in terms of the scheme formulated by the Reserve Bank of India for MSME Units, the respondent Bank did not care to consider the same and proceeded further and issued a Possession Notice dated 24.06.2015, under Section 13(4) of the SARFAESI Act and upon receipt of the same, further sum of Rs.5.80 lakhs was deposited and repeated representations were submitted for consideration of the OTS scheme and without due and proper application of mind, it was also rejected.

सत्यमेव जयते

4. The respondent Bank has issued the auction Sale Notice dated 08.09.2016, fixing the date of auction sale on 14.10.2016, by claiming a sum of Rs.1,00,19,600.88/- and Rs.20,63,199.50/- together with interest from 01.09.2016 from the petitioners and the properties were also sold in favour of successful bidders. The petitioners, challenging the auction sale Notice had filed S.A.No.03/2017 and it came to be allowed vide order

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dated 18.07.2017 and the challenge made by the respondent Bank in R.A.S.A.No.189/2017, came to be allowed by an order dated 23.05.2019, by the Debts Recovery Appellate Tribunal at Chennai and aggrieved by the said order, the petitioners had filed W.P.No.20867 of 2019 and it also came to be dismissed on 18.11.2019.

5. The primordial submission made by the learned counsel appearing for the petitioners is that in the light of the various guidelines issued by the Reserve Bank of India, especially in respect of MSME unit, coupled with the various decisions rendered by the Hon'ble Supreme Court of India, their request for OTS proposal as well as some concession have to be positively considered and the representation dated 21.01.2020, submitted in this regard, is yet to invoke any kind of response and therefore, he is constrained to approach this Court by filing this Writ Petition.

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6. *Per contra,* learned Standing Counsel appearing for the respondent Bank has drawn the attention of this Court to the counter affidavit dated 11.08.2020 and would submit that accounts were classified as 'Non Performing Asset' as early as on 2014 and in the

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auction sale conducted on 14.10.2016, all three properties were sold in favour of successful bidders and Sale Certificates also came to be registered in favour of the successful auction purchasers. It is also the submission of the learned counsel appearing for the respondent Bank that the rate of interest has been charged as per the terms of Agreement between the Bank and the petitioners and the interest is chargeable, even if the loan account is classified as 'Non Performing Asset' and to be kept as a separate item. In terms of One Time Settlement proposal is concerned, the discretion is left with the respondent Bank to follow their own guidelines and since the case of the petitioners does not fall within any parameters, it cannot be considered positively, especially in the light of the development of the auction sale of the secured assets and issuance of Sale certificates in favour of the auction purchasers.

सत्यमेव जयते

7. This Court has carefully considered the rival submissions and also perused the materials placed before it.

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8. A perusal of the grounds of the Writ Petition would disclose that general grounds have been raised stating that that the respondent Bank had committed deliberate violation of the rules laid down by RBI

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and the Supreme Court and acted in an arbitrary manner, which is a gross violation of Principles of Natural Justice. Attention of this Court has not been drawn to any specific guidelines of the Reserve Bank of India or the guidelines framed by the respondent Bank as to the positive consideration of the request made by the petitioners, in their representation and in the absence of the same, this Court is not in a position to come to the aid of the petitioners. The respondent Bank has also taken a specific stand in the counter affidavit in paragraph no.10 that three secured assets have been sold and Sale Certificates were also registered in favour of the successful auction purchasers on 25.01.2017, 04.06.2019, 08.06.2019, respectively.

9. In the light of the above facts and circumstances, this Court finds no merits in this Writ Petition. In the result, the Writ Petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

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[M.S.N.,J] [A.A.N.,J.]
07.01.2021

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Internet:Yes /No
Index: Yes/ No

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M.SATHYANARAYANAN, J.,
AND
A.A.NAKKIRAN, J.,

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To
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