IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.14739 of 2021

G.R.Pushpageetha .. Petitioner

Vs.

1.The Assistant General Manager
State Bank of India Retail Assets
Centralized Processing Centre,
Block No. 97, AF Block, 4th Avenue,
Shanthi Colony, Annanagar,
Chennai 600 040.

2.The Chief Manager
State Bank of India, Rajaji Salai Branch
(13242), No.1, Anchor Gate Building Port
Trust, Rajaji Salai, Chennai 600 001. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents bank to consider the case of the Petitioner to Restructure the loan account No. HTL 37760699509 of the petitioner and thereby enable the petitioner to pay the EMIs as per the reschedule structure.

For Petitioner : Mr.K.Venkateswaran

For Respondents : Mr.M.L.Ganesh

ORDER
(made by the Hon'ble Chief Justice)

The petition is utterly misconceived and goes against the grain of established judicial principles.

2. The petitioner wants his representation for restructuring the loan obtained from the respondent bank to be considered. For a start, a writ in the nature of mandamus cannot be issued to

command a secured creditor to enter into a compromise with a borrower as such writ is ordinarily not issued in respect of such private matters. More importantly, a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 has been issued on April 20, 2021 and the petitioner's prayer, in effect, seeks to negate the effect of such notice and the rights of the parties thereupon.

3. It is now well established that a notice under Section 13 (2) of the said Act is not justiciable. The remedy of the borrower or the noticee is to issue a reply which the secured creditor is obliged to consider. However, even if the reply or the contents thereof are rejected by the secured creditor, the borrower or any other person aggrieved may approach the jurisdictional Debts Recovery Tribunal only upon measures under Section 13(4) of the Act being taken by the secured creditor.

4. According to the petitioner, the petitioner has replied to the notice dated April 20, 2021 and the petitioner's reply has been considered and a response in such regard has also been forwarded by the secured creditor to the petitioner.

5. The further ground urged by the petitioner is of no effect. According to the petitioner, following the pandemic and the initial lockdown in its wake, an order was passed by the Supreme Court requiring no account to be declared as a 'non-performing asset' (for short, NPA). The embargo was lifted sometime in March, 2021.

6. In the usual course, an account is declared NPA if it meets certain conditions as per the guidelines issued by the Reserve Bank of India. A secured creditor has no choice in the matter and if certain parameters are met, the account has to be declared as an NPA. Upon an account being recorded as an NPA, the secured creditor usually issues a notice under Section 13(2) of the Act, whereupon the borrower is obliged to repay the loan or deal with the demand as indicated in the notice. By virtue of the provision inserted by amendment, Section 13(3A) of the Act of 2002, the borrower's reply ought to be considered by the secured creditor and the decision communicated to the borrower before any measure is adopted under Section 13(4) of the Act. An aggrieved borrower may approach the Debts Recovery Tribunal only upon any measure under Section 13(4) of the Act being adopted.

7. What the Supreme Court order staying the declaration of NPA implied was that demands could not be raised by banks and like creditors on the basis of the account of the constituent having turned NPA. The embargo was lifted in March, 2021 as noticed above. Though the account turned NPA in November, 2020,

in keeping with the Supreme Court order, no immediate demand was raised by the respondent bank on the petitioner and the bank waited till after the injunction was lifted by the Supreme Court to issue the notice of demand under Section 13(2) of the Act on April 20, 2021. There is no merit in the petitioner's assertion that the notice cannot be acted upon since the declaration of NPA was made at a time when the Supreme Court order was subsisting.

8. In view of the above, W.P.No.14739 of 2021 is dismissed. There will, however, be no order as to costs. Nothing in this order will prejudice the petitioner in any subsequent proceedings that may be instituted before the appropriate Debts Recovery Tribunal.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Assistant General Manager,
State Bank of India,
Retail Assets Centralized processing Centre,
Block No.97, AF Block,
4th Avenue, Shanthi Colony,
Annanagar, Chennai-600040

2.The Chief Manager,
State Bank of India,
Rajaji Salai Branch (13242),
No.1, Anchor Gate Building,
Port Trust, Rajaji Salai,
Chennai-600001

+1cc to Mr.K.Venkateswaran, Advocate (SR No.34121)

W.P.No.14739 of 2021

VBM (CO)
PR (22/07/2021)