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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

WP No.22098 of 2021

1. M.Vijaya

2. M. Arunkumar

... Petitioners

-vs-

1 The Authorised officer
Yes Bank Limited 803
Ambattur NOC Chennai

2 The Branch Manager
Yes Bank Limited Mogappair East Branch
Ground Floor 412 Thiruvalluvar salai
Panneer Nagar Main Road Mogappair east
Chennai

3 S.Murgesan

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the 1st and 2nd respondents in Loan A/C No. 062884600000180 which classified as Non-Performing asset and quash the same ii) issue a direction to the 1st and 2nd respondents to receive objection / explanations from the petitioners iii) directing the 1st and 2nd respondents to restructure the loan A/C No. 062884600000180 and allow the petitioners to continue the repayment of the said loan facility on such completion of repayment the respondents 1 and 2 may be directed to enter private treaty to convey the mortgaged property in favour of the petitioners

For the Petitioners : Mr.J.Kamaraj



ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

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The petitioners claim certain rights over an immovable property that has apparently been mortgaged in connection with credit facilities obtained by one S.Murugesan as the Proprietor of Navaneetham Industries. The first petitioner is the wife of the said Murugesan and the second petitioner is the son. The immediate cause for approaching this Court is the receipt of a notice in the name of Murugesan issued by YES Bank on August 26, 2021.

2. It is the petitioners' case that the borrower Murugesan is separated from the petitioners and since the petitioners are joint owners of the mortgaged property, the bank is not entitled to proceed against the relevant asset to the extent that the petitioners are the owners thereof.

3. It is evident that the bank has merely issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to the borrowers. As per the said Act of 2002, even a mortgagor is defined as a borrower. It is also evident that the petitioners are aware that the relevant property in which they claim interest had been mortgaged in connection with the credit facilities obtained by a family concern.

4. In such circumstances, apart from the fact that a notice under Section 13(2) of the said Act of 2002 is not justiciable at the stage of the issuance thereof, the petitioners are left free to challenge any measure taken by the respondent bank under Section 13(4) of the Act in accordance with Section 17 of the said Act. The matters complained of herein are capable of being carried at the appropriate stage upon Section 13(4) of the Act being invoked by the secured creditor, before the jurisdictional Debts Recovery Tribunal.

5. Accordingly, without going into the merits of the matter, the petitioners are left free to approach the jurisdictional Debts Recovery Tribunal at the appropriate stage, in accordance with law.



WP No.22098 of 2021 is disposed of. There will be no order as to costs. WMP No.23318 of 2021 is closed.

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Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

sra

To

- 1 The Authorised officer
Yes Bank Limited 803
Ambattur NOC Chennai
- 2 The Branch Manager
Yes Bank Limited Mogappair East Branch
Ground Floor 412 Thiruvalluvar salai
Panneer Nagar Main Road Mogappair east
Chennai

WP No.22098 of 2021

SJ(CO)
SU(26/10/2021)