IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.28971 of 2019
and
W.M.P.No.28723 of 2019

M. Karthikeyan .. Petitioner

Vs.

1. The Chief Manager,
Bank of India,
Tirupur SME Branch,
No.18, Harini Centre,
Nehru Street, Kaderpet,
Tirupur 641 603.

2. The Assistant General Manager,
Bank of India,
Asset Recovery Branch,
3rd Floor,
Star House,
No.324, Oppanakara Street,
Coimbatore 641 001. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to forbear the respondents from taking any recovery action against the petitioner.

For Petitioner : Mr. R.Rajarajan

For 1st Respondent : No Appearance

For 2nd Respondent : Mr. F. B. Benjamin George

ORDER

The petitioner has filed this petition under Article 226 of the Constitution of India to issue a Writ of Mandamus to forbear the respondents from taking any recovery action against the petitioner.

2. The case of the petitioner is that the petitioner is a proprietorship concern who is engaged in yarn and cloth trading since a decade had availed credit facilities from the respondent bank by mortgaging the property and failed to repay the loan

due to some loss in his business. Hence the loan availed by the petitioner was declared as non-performing asset. Subsequent to that SARFAESI proceedings were initiated against his property. Such being the case, the petitioner approached the respondent bank for One Time Settlement, for which letter dated 29.12.2018 was issued by the 1st respondent stating the total amount of Rs.257.47 lakhs to be paid by the petitioner towards the settlement of his dues out of which 10% of the amount was settled. Since the petitioner failed to settle 90% of the amount, the properties under mortgage were attached by the Income Tax Department vide order dated 01.03.2019 against which the petitioner obtained an order of interim stay. Even thereafter, the petitioner was unable to settle the dues. Therefore the petitioner made a representation before the 1st respondent seeking extension of time to settle the dues for which the 1st respondent issued a letter stating the schedule of payment however the petitioner was unable to repay the dues and therefore the bank called upon the petitioner to pay the dues failing which it was informed that the compromise offer will be revoked. Having left with no other remedy, the petitioner had filed this Writ Petition seeking the above relief.

3. The learned counsel for the petitioner submits that though series of representations were made by the petitioner before the 1st respondent, the same were not considered and the relief sought for by the petitioner was not granted. The learned counsel for the petitioner submits that this Court may grant interim injunction restraining the Respondents from taking any recovery action against the petitioner pending consideration of the representation filed by the petitioner.

4. The learned counsel for the respondents submits that though the time was extended as sought for by the petitioner for repayment of loan and though very many opportunities were given to the petitioner, the petitioner failed to repay his dues to the respondent bank. The prayer sought for by the petitioner to retrain the respondents from taking any recovery action in the present petition cannot be entertained as the petitioner is a persistent defaulter and no lenience can be granted to the petitioner. Hence the learned counsel for the respondents prays for the dismissal of the present petition.

5. Having perused the materials available on record, it is clear that the petitioner had failed to repay the loan availed from the respondent bank and despite grant of sufficient time for repayment of loan, the petitioner has not repaid the loan, but had defaulted in payment. In such a backdrop, the petitioner cannot pray this Court to exercise its inherent jurisdiction under Article 226 of the Indian Constitution for an affirmative direction to the respondents though the petitioner as given

ample opportunities to repay his loan.

6. For the aforesaid reasons, this Writ Petition is dismissed. If at all the petitioner has any bonafide intention to settle the dues, the petitioner is at liberty to make a fresh representation before the respondents and on such representation being made, the respondents shall consider the same and pass appropriate orders in accordance with law and guidelines. Consequently the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

NHS

To:

1. The Chief Manager,
Bank of India,
Tirupur SME Branch,
No.18, Harini Centre,
Nehru Street, Kaderpet,
Tirupur 641 603.

2. The Assistant General Manager,
Bank of India,
Asset Recovery Branch,
3rd Floor,
Star House,
No.324, Oppanakara Street,
Coimbatore 641 001.

+1cc to Mr.R.Rajarajan, Advocate, S.R.No.57962
+1cc to Mr.F.B.Benjamin, Advocate, S.R.No.57750

W.P.No.28971 of 2019
&
W.M.P.No 28723 of 2019

GPL(CO)
SB(01/12/2021)