



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.03.2021

CORAM:

THE HON'BLE MR.SANJIB BANERJEE, THE CHIEF JUSTICE
and
THE HON'BLE MRS.JUSTICE R.HEMALATHA

W.P. (MD) No.2941 of 2021

and

W.M.P (MD) No.2372 of 2021

M/s.Papathiyammal Pitchai Educational Trust,
represented by its
Chairman & Managing Trustee,
R.Chandramohan

... Petitioner

-vs-

The Authorised Officer,
City Union Bank Limited,
(Credit Recovery and Management Department),
Administrative Office,
No.24-B, Gandhi Nagar,
Kumbakonam - 612 001.
Thanjavur District.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records relating to the notices issued by the respondent under Section 13(2) and in A.O./REC/ /2020-21, dated 08.10.2020 and possession notice under Section 13(4) of the SARFAESI Act, dated 03.02.2021 by relying upon by the alleged reclassification of the petitioner's accounts as NPA on 31.01.2020 and quash the same and direct the respondent to follow the schemes and guidelines issued by the Government of India and Reserve Bank of India regarding COVID-19 relief and as directed by the Honourable Supreme Court in W.P(Civil) No.825 of 2020, dated 27.11.2020.

For Petitioner: Mr.S.Natarajan

For Respondent: Mr.Pala.Ramasamy

O R D E R

[Order of the Court was made by The Hon'ble CHIEF JUSTICE]

This is another matter where a defaulter having admittedly failed to repay the dues of the bank seeks to stall the measures taken by the bank to proceed against the securities by filing this petition in this extraordinary jurisdiction.



2. Whether may be the status of a defaulter, it is of hardly any consequence. If a debtor as defined in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 fails to repay the secured creditor and the account is classified as a non-performing asset, the secured creditor has special powers conferred by the statute to proceed against the securities without any recourse to adjudication at that stage. The said Act of 2002 is a departure from the usual practice in Indian jurisprudence of execution following adjudication.

3. The vires of the Act has been upheld and the only relief, which has been afforded, is for a debtor to have a right to protest a notice issued under Section 13(2) of the Act by the secured creditor. Even the treatment of such notice by the secured creditor is not justiciable at such stage as a debtor, or any person aggrieved for that matter, may approach the Debts Recovery Tribunal only upon measures being taken by a secured creditor under Section 13(4) of the Act.

4. In the present case, a possession notice has been issued on February 3, 2021 which implies that measures have been resorted to by the respondent secured creditor under Section 13(4) of the Act.

5. Ordinarily, Debts Recovery Tribunals entertain petitions upon requiring a substantial deposit to be made. There is no doubt that this petitioner seeks to dodge the deposit, which should neither be encouraged nor permitted.

6. Since there is an efficacious alternative remedy available to the petitioner as statutorily ordained, the present writ petition is not entertained and the writ petitioner is left free to pursue such remedy in accordance with law.

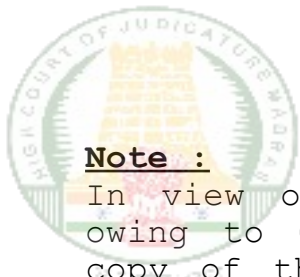
7. The petitioner claims that judgments of the Supreme Court instruct that the Government guidelines must be followed by banks and financial institutions pertaining to classification of accounts as NPAs. If it is the petitioner's grievance that the petitioner's account has been wrongly classified as NPA, that is also a grievance capable of being carried to the appropriate Debts Recovery Tribunal under Section 17 of the Act and the writ Court should not be disturbed over it.

8. W.P.(MD) No.2941 of 2021 is disposed of without any order as to costs. Consequently, W.M.P.(MD) No.2372 of 2021 is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar



Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

+1cc to Mr.Palaramasamy, Advocate Sr.No.9264

+1cc to Mr.S.Natarajan, Advocate Sr.No.8806

W.P. (MD) No.2941 of 2021

and

W.M.P (MD) No.2372 of 2021

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