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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 16.07.2021
CORAM :
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE S.ANANTHI
W.P.(MD) No.10007 of 2021

K.Rajendran .. Petitioner

Vs

1.The Circle Officer,
Punjab National Bank,
Circle Office, PNB House,
Trichy-Tanjore Highway,
Kailaspuram,
Trichirapalli - 620 014.
2.The Manager,
Punjab National Bank (Oriental Bank of Commerce,
No.492, Jawahaar Bazaar,
Karur. ... Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus, directing the respondent banks to consider the representation dated 19.10.2020 made by the petitioner under OTS policy, 2020 issued by RBI and consequently, redeem the properties from the respondents.

For Petitioner : Mr.P.Thirumahilmaran

For Respondents : Mr.Sribalaji,
Standing Counsel for R2

O R D E R

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.P.Thirumahilmaran, learned counsel for the petitioner and Mr.Sribalaji, learned Standing Counsel for respondent No.2.

2.The petitioner has filed this Writ Petition praying for issuance of a direction upon the respondent bank, which was originally Oriental Bank of Commerce and merged with the Panjab National Bank, to consider his representation dated 19.10.2020, by applying One Time Settlement, 2020, issued by the Reserve Bank of India.

3.Under normal circumstances, we would not entertain such Writ Petition for such relief, if a borrower is declared as NPA and

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action under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SERFAESI Act) is initiated. The remedy open for the aggrieved borrower is to approach the Debts Recovery Tribunal and they cannot file a Writ Petition. However, considering the peculiar facts and circumstances of the case, we are inclined to take up the Writ Petition.

4.The undisputed fact is that the petitioner is a defaulter and proceedings were initiated under rules 8(6) & 9 of Security Interest (Enforcement) Rules, 2002 and the petitioner challenged the same by filing S.A.No.306 of 2012 before the Debts Recovery Tribunal, Madurai. During the pendency of the said appeal, Second Sale Notice dated 05.02.2013 was issued to him, which was challenged by the petitioner by filing S.A.No.56 of 2013. In the meantime, the petitioner has remitted a sum of Rs.5,00,000/- (Rupees Five Lakhs only) by Demand Draft dated 11.03.2013 and Rs.13,00,000/- (Rupees Thirteen Lakhs only) dated 15.05.2013. The Debts Recovery Tribunal by order dated 28.06.2013 allowed the Second Appeal and set aside the possession notice. Aggrieved by the same, the respondent Bank approached the Debts Recovery Appellate Tribunal (DRAT), Chennai. Parallelly, the respondent Bank has also filed an application in O.A.No.704 of 3013 under Section 19 of the Recovery of Debts Due To Banks and Financial Institutions Act, 1993. The said application is also pending. Interestingly, pursuant to the Second Appeal, auction appears to have been taken place and one Mr.V.K.Asokan participated in the auction on 13.03.2013. The sale was confirmed in his favour by letter dated 05.04.2013. Since the auction purchaser was not given possession of the property, in spite of issuance of sale certificate in his favour, he has filed W.P.(MD) No.218 of 2016 to direct the respondent Bank to execute the sale deed and hand over possession of the property or in the alternative refund the entire sale consideration together with interest from 05.04.2014.

5.In the background of these facts, the petitioner has submitted a representation dated 19.10.2020, making an offer for one time settlement, wherein he has pointed out the payment effected by them. The said representation was sent by speed post shown to have received by the office of the respondent on 20.10.2020. By considering the peculiar facts, this would be an appropriate case, where the respondent bank can consider the genuineness of the offer and if the offer is in tune with the relevant guidelines, the respondent Bank may consider the same.

6.Learned counsel for the respondent Bank would submit that without the presence of the auction purchaser, one time settlement offer cannot be considered. This submission is acceptable, since the respondent Bank has issued the sale certificate in favour of the auction purchaser on 16.04.2013.

7.The respondent bank shall issue notice to the petitioner and the auction purchaser and consider the genuineness of the one time

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settlement offer and if find possible, pass orders on merits and in accordance with law. While considering the representation, relevant guideline shall be taken note of. This direction shall be complied with, as expeditiously as possible, preferably within eight weeks from the date of receipt of a copy of this order.

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8.The Writ Petition stands disposed of with the above directions. No costs.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021
Sub Assistant Registrar(CS)

sj
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.

+1 CC to M/s.P.THIRUMAHILMARAN, Advocate (SR-23122[F] dated 19/07/2021)

+1 CC to M/s.VAST LAW ASSOCIATES, Advocate (SR-23373[F] dated 20/07/2021)

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