BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.20017 of 2020

M.Sundaramoorthy ... Petitioner

Vs.

1.The Ombudsman,
Reserve Bank of India,
Chennai.

2.The Authorised Officer,
Axis Bank,
3rd Floor, No.82, Southern Zonal Office,
Dr.Radhakrishnan Salai,
Chennai.

3.The Branch Manager,
Axis Bank,
No.75/E-1, Salai Road,
Thillai Nagar,
Trichy. ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 2 and 3 to consider the representation of the petitioner dated 12.12.2019 submitted for one time settlement of balance amount of the loan amount due to the respondents 2 and 3 bank pertaining to M/s.Swastikha Agro Foods Private Limited and M/s.Sri Bhuvaneswari Agro Industries Private Limited and removal of the name of the respective companies and the petitioner is concerned from the NPA list of the respondents 2 and 3 bank as well within a time frame as fixed by this Court.

For Petitioner : Mr.B.Prahalad Ravi

O R D E R

Heard the learned Counsel appearing for the petitioner. The petitioner is running a commercial enterprise. He had availed loan from the Lakshmi Vilas Bank originally and the loan account was subsequently taken over by the Axis Bank. The petitioner due to certain reasons could not pay the loan installments and therefore, the said loan amount was classified as non performing asset and the Bank had initiated proceedings under the SARFEASI Act and at this stage, the petitioner wants to settle the issue through one time settlement. The petitioner has also given a representation to the bank on 12.12.2019 in this regard. The grievance of the petitioner is that the Axis Bank has not considered his request and that necessitated the filing the writ petition.

2.I am afraid that the writ petition will not be maintainable for more than one reason,

(a) Axis Bank is not a Public Sector undertaking and it is not a State instrumentality within the meaning of Article 12 of the Constitution of India. Hence, Writ petition against such entity is not maintainable,

(b) Since action under the SARFAESI Act had already been initiated, the petitioner cannot maintain this writ petition and the remedy is elsewhere, and

(c) in view of several decisions, it is not open to the writ court to call upon the financial institution to accept the one time settlement offered by the borrower.

3.I must be fair to the petitioner Counsel. He cited quite a few decisions including the order dated 06.06.2019 in W.P(MD) No.22234 of 2016 to sustain his contention that the writ petition is maintainable and the element of public duty is very much present.

4.I am unable to accept the contentions of the petitioner for the above said three reasons. It is entirely for the respondents to take a call on the petitioner's request. I make it clear I have not gone into the merits of the matter and leaving it open to the respondents 2 and 3 to consider the request of the petitioner, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar(T & P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To:-

1.The Ombudsman,
Reserve Bank of India,
Chennai.

2.The Authorised Officer, Axis Bank,
3rd Floor, No.82, Southern Zonal Office,
Dr.Radhakrishnan Salai, Chennai.

3.The Branch Manager,
Axis Bank,
No.75/E-1, Salai Road,
Thillai Nagar,
Trichy.

+1 CC to M/s.B.PRAHALAD RAVI, Advocate (SR-4113[F] dated 09/02/2021)

W.P(MD)No.20017 of 2020
08.02.2021

SRK(CO)
TR(17.02.2021) 3P 5C