BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.10.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, THE CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.DURAISWAMY

W.P.(MD) No.19846 of 2018
and
W.M.P(MD)Nos.17624 & 17625 of 2018

P.M.Neelamegam .. Petitioner

Vs

1.The Chief Manager,
REPCO Home Finance Limited,
No.24, Ram Arcade,
B-14, 2nd Floor, Thillai Nagar,
11th Cross Main Road,
Trichy-620 018.

2.The Authorized Signatory,
Repco Home Finance Ltd.,
Corporate Office 3rd Floor,
Alexander Square,
New No.2 (Old No.34 & 35),
Sardar Patel Road,
Guindy, Chennai-32. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the Communication of the 2nd respondent dated 05.09.2018 quash that part of the communication stating that the One Time Settlement is valid only upto 15.09.2018 and consequently direct the Respondents to extend the time granted for settling the loan accounts TRY 1397, TRY 1258 and TRY 1254 with the Respondents Bank.

For Petitioner : Mrs.D.Geetha

For R1 : Mr.Pala.Ramasamy

For R2 : Mr.A. Elangovan for R2

ORDER

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

This petition is utterly misconceived and devoid of any merit.

2. Apart from the fact that advocate for the petitioner suggests, completely without basis, that the respondent secured creditor cannot be regarded as a secured creditor within the meaning of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the object of the petition is for the secured creditor to extend the time for making payment under a one-time settlement scheme or offer made by such secured credit to the petitioner.

3. Several orders have been passed by this Court making a distinction between REPCO Bank and REPCO Home Finance Ltd. Notwithstanding REPCO Home Finance Ltd being promoted by REPCO Bank, since there is a notification issued by the Central Government recognising REPCO Home Finance Ltd to be a financial institution and, as such, a secured creditor within the meaning of such definition in the Act of 2002, REPCO Home Finance Ltd, as a secured creditor, is entitled to invoke the provisions of the Act of 2002. However, REPCO Bank cannot be regarded as a secured creditor within the meaning of the relevant definition as it does not comply with the conditions to qualify as a secured creditor.

4. It is elementary that a Writ Court does not possess any authority to rewrite the contract between the parties or issue a mandamus to a secured creditor to alter the terms of settlement offered to a constituent. Oftentimes, it is because of the pernicious practice followed in some courts in assuming authority in such matters that Indian borrowers labour under a misapprehension that their obligation to repay may be suspended for years without end.

5. When a secured creditor agrees to take a haircut and give up a part of its claim, certain conditions are indicated. It is only upon those conditions being met, would the amount sought to be recovered stand reduced. It is completely inequitable that a Court would interfere in this process and enlarge the time for making payment on the part of the borrower without undoing the sacrifice that is offered by the banker. In matters of the present kind, it is the complete discretion of the banker as to the conditions it would set in offering a one-time settlement and the Writ Court would, ordinarily, not interfere therewith.

6. W.P.(MD) No. 19846 of 2018 is dismissed. W.M.P.(MD) Nos. 17624 & 17625 of 2018 are closed. The petitioner will pay costs

assessed at Rs.5,000/- (Rupees Five Thousand only) to the respondent secured creditor.

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MNR/LR

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.D. GEETHA, Advocate
(SR-32686[F] dated 26/10/2021)

W.P.(MD) No.19846 of 2018
26.10.2021

MGJ/UV(08.11.2021) 3P 2C