BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **12.01.2022**

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

and

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.(MD)No.594 of 2022
and
WMP(MD)Nos.462, 466 and 467 of 2022

M/s.Shri Ezhil Promoters
Represented by its Partner
EzhilSumathi ... Petitioner

Vs.

1.The Hon'ble Chief Judicial Magistrate
District Court Campus,
Madurai,
Madurai District.

2.The Authorized Officer,
Canara Bank,
Asset Recovery Management Branch,
1st Floor, Circle Office Building,
St. Marry's Campus,
East Veli Street,
Madurai - 625 001.

3.The Branch Manager,
Canara Bank,
Tallakulam Branch,
Madurai. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the Chief Judicial Magistrate, Madurai in Cr.M.P.No.285 of 2021, dated 17.11.2021 and quash the same as illegal and further directing the respondents No.2 and 3 to consider the earlier OTS proposal made by the petitioner to the respondent Bank.

For Petitioner : Mr.A.M.Karuppasamy

For Respondents : Mr.N.Dilip Kumar

(For R2 and R3)

O R D E R

The Writ Petition has been filed praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the Chief Judicial Magistrate, Madurai in Cr.M.P.No.285 of 2021, dated 17.11.2021 and quash the same as illegal and further, directing the respondents No.2 and 3 to consider the earlier OTS proposal made by the petitioner to the respondent Bank.

2. The learned counsel appearing for the petitioner would submit that the petitioner has borrowed a sum of Rs.18,00,000/-, as Housing Loan, from the respondent Bank, in Loan Account No.1012619028121. The loan amount was disbursed on 28.10.2010. Thereafter, the petitioner availed over draft facility of Rs.1 crore from the respondents Bank on 29.01.2013 at the rate of 12% per annum. Thereafter, the petitioner had borrowed a term loan of Rs.45,00,000/- from the respondent's Bank on 26.05.2015. At the time of availing loan, the petitioner had executed deeds to the respondent Bank. After getting the loan, the petitioner paid monthly installments regularly to the Bank without any default. As on date, the petitioner paid Rs.93,86,254/- as lumpsump to the Bank, on various occasions, apart form the regular installments. Subsequently, the account was classified as NPA on 01.04.2017. Therefore, the respondent issued the demand Notice under Section 13 (2) of SARFAESI Act, 2002, on 16.10.2017 in respect of OD facility and Housing loan of Rs.1,48,53,442.75 and requested to repay the said amount with future interest.

3.The learned counsel would further submit that the respondent Bank has issued a possession notice, dated 26.02.2018, under Section 13(4) of SARFAESI Act r/w Rule 8 of Security Interest (Enforcement) Rules 2002 and requested to repay the outstanding amount of Rs.1,57,22,112.75/-. After issuing possession notice on 04.09.2018, the petitioner approached the respondent bank with one time settlement offer of Rs.1.75 Crores of full and final quit of the loan and the same was accepted by the Bank, but the petitioner unable to pay the amount due to financial difficulties. On 25.06.2021 the Bank issued the impugned sale notice. Challenging the impugned sale notice, dated 25.06.2021, the petitioner has filed SARFAESI Appeal before the Tribunal, Madurai in S.A.No.468 of 2021 and the same was taken up for hearing on 02.11.2021and thereafter on 26.11.2021, the Tribunal has passed an order of Status quo with condition to deposit Rs.1 Crore to the respondents Bank on or before 03.12.2021.

4. The learned counsel also submitted that as per the order of the Tribunal, the petitioner paid Rs.1 Crore on three installments and also filed a Memo before the DRT, Madurai along with the payment of receipts on 09.12.2021 and therefore, the order of status quo is still in force. Thereafter due to non-availability of the Preceding

Officer, Madurai, the case in S.A.No.468 of 2021 was not listed for hearing on 10.12.2021 and the same was re-posted on 17.12.2021 and thereafter it was adjourned to 10.02.2022. In the meantime, the respondent Bank suppressed the same, filed a petition before the learned Chief Judicial Magistrate, Madurai in Cr.M.P.No.285 of 2021, under Section 14 of SARFAESI Act, and obtained an order from the Court without any notice to the petitioner, which is against law and violates the principles of natural justice.

5. Mr.N.Dilipkumar, the learned Counsel appearing for the respondents Bank would submit that sale had already been completed and sale certificate has been issued. Instead of challenging the sale certificate before the DRT, the petitioner has approached this Court to stall the entire act and hence, prayed for dismissal of the writ petition.

6. Admittedly, more than 2.5 Crores due to the Bank. According to the petitioner, a sum of Rs.93,86,254/- had already been paid and pursuant to the orders of the Tribunal, as undertaken by the petitioner, Rs.1,00,00,000/- has been paid. The Bank is willing to settle the matter giving an opportunity to the petitioner to avail the One Time Settlement.

7.We are of the view that the petitioner has undertaken to pay the amount within three working days and even going by the stand of the petitioner, huge amount is due to the Bank. Since the petitioner has got an effective alternative remedy before the Debt Recovery Tribunal, we are not inclined to entertain the writ petition. Hence, the Writ Petition stands dismissed.

8.The observation made aforesaid is only for the purpose of disposal of the Writ Petition. It is open to the parties to putforth their contentions before the DRT, if the petitioner chooses to move the said Forum. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

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/ /2022

Sub Assistant Registrar(CS)

MPK

To

1.The Chief Judicial Magistrate
District Court Campus,
Madurai,
Madurai District.

2.The Authorized Officer,
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Asset Recovery Management Branch,
1st Floor, Circle Office Building,
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3.The Branch Manager,
Canara Bank,
Tallakulam Branch,
Madurai.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-1763[F] dated 19/01/2022)

W.P.(MD)No.594 of 2022
12.01.2022

MGJ(01.02.2022) 4P 5C