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.595 of 2022

and

WMP(MD)No.464 of 2022

Mrs.T.Kalaiselvi ... Petitioner

Vs.

1.The Authorized Officer,
Central Bank of India
Madurai Regional Office,
Raja Muthiah Mandram, First Floor,
Dr.Ambedkar Road,
Madurai - 625 020.

2.The Branch Manager,
Central Bank of India,
Nattarasankottai Branch,
Lalbahadur Sastri Street,
Nattarasankottai,
Sivagangai District. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to sale notice of 1st respondent, dated 07.12.2021 and quash the same and consequently direct the 1st respondent and 2nd respondent not to proceed with the sale and physical possession of the property.

For Petitioner : Mr.V.Manikandan

For Respondents : Mr.N.Dilip Kumar

O R D E R

S.VAIDYANATHAN, J.
and
DR.G.JAYACHANDRAN, J.

The Writ Petition has been filed praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to sale notice of 1st respondent, dated 07.12.2021 and quash the same and consequently, direct the 1st respondent not to proceed with the sale and physical possession of the property.

2. The learned counsel appearing for the petitioner would submit that the property originally belonged to the petitioner's father and he gifted the property to the petitioner. The petitioner availed a sum of Rs.9,00,000/- as loan from the respondent Bank in the year 2013. According to the petitioner, in the year 2019, her husband was taking treatment for the lungs, for which, he has paid so many amount to the medical treatment and subsequently, he died on 02.06.2021 due to COVID-19. Hence, the petitioner is not able to pay the EMI amount regularly. Due to irregular EMI, the respondent Bank issued the possession Notice on 20.04.2021. Further, on 17.12.2021, the respondent Bank issued the auction cum sale notice, dated 07.12.2021 to the petitioner and the auction is going to be held on 20.01.2021. Hence, the petitioner has filed the present writ petition to quash the same and consequently, direct the 1st respondent not to proceed with the sale and physical possession of the property.

3. The petitioner has got an alternative remedy before the Debt Recovery Tribunal, Madurai. As the said Tribunal is vacant, the matters are taken by DRT, Coimbatore. It is informed before this Court that the Presiding Officer at Coimbatore, has not been given extension to hear the matters arising from the Jurisdiction at Madurai and he is awaiting orders. Hence, the present Writ Petition has been filed before this Court bypassing the DRT.

4. Taking note of the peculiar circumstances of this case, more so, the petitioner's husband, who was a driver in transport Department, died of Covid and that the terminal benefits of the employee has not been settled, and that the DRT is not available for alternative remedy, no gratuity shall be paid to the Managing Director, if the amount is not settled, as non payment of money due to the employee amounts to misappropriation of funds by the employer. As the action of the employer squarely falls under moral turpitude, it is open to the petitioner to make a request for settlement of terminal benefits to the Transport Corporation, if not made earlier. It is open to the Government to attach the properties of the Managing Director, if the terminal benefits are not settled to the legal heirs of the deceased within a month from the date of demand, if not already settled. This Court is inclined to grant relief as the petitioner has availed the loan of Rs.9,00,000/- as early as in 2013, and she has not paid the dues regularly, due to the reasons stated supra.

5. This Court may have sympathy towards the petitioner and her family members. But, when the public money is drawn and has not been repaid, this Court cannot shut it eyes and grant the relief as prayed for by the writ petitioner. Since the petitioner has not paid the dues regularly, this Court is not inclined to interfere with impugned order, which is subject matter of the writ petition. Hence, the Writ Petition is dismissed. It is open to the parties to approach DRT and thereafter DRAT after it becomes functional.

6. It is open to the Bank to proceed with the recovery action in accordance with law, if there is non-compliance. However, if the petitioner herein paid 50% of the due before confirmation of sale, then, the sale shall be recalled. The views expressed by this Court in this writ petition is only for the purpose of disposal of this petition and it is for the appropriate Forum to arrive at an early solution to the problem on the basis of the materials available before it. The facts referred to above in respect of the Transport Corporation may merely be construed as an observation and not a finding and the same has to be canvassed before the appropriate Forum, if the petitioner's claim has not already been settled by the Transport Corporation. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

MPK

To

1.The Authorized Officer,
Central Bank of India
Madurai Regional Office,
Raja Muthiah Mandram, First Floor,
Dr.Ambedkar Road,
Madurai - 625 020.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-1762[F] dated 19/01/2022)

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RK/CK(03/02/2022) 3P 3C