



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.05.2022

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P. (MD) No.9491 of 2022

and

W.M.P. (MD) No.6791 of 2022

M.Abdul Raheem

... Petitioner

-vs-

The Authorized Officer,
State Bank of India,
Stressed Assets Recovery Branch,
Madurai.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the entire records pertaining to the summons dated 28.01.2022 passed in Cr.M.P.No.5 of 2022 on the file of the Learned Chief Judicial Magistrate, Sivagangai, issued under section 14(1) and 14(2) of SARFAESI Act, by the respondent bank quash the same as illegal, consequently directing the respondent to extend the OTS scheme in respect of petitioner dues with respect to loan account No. 1096801071.

For Petitioner : Mr.T.Lenin Kumar

For Respondent : Mr.A.R.M.Ramesh

O R D E R

[Order of the Court was made by T.RAJA, J.]

We are inclined to entertain this writ petition for the simple reason that the petitioner stands remediless because there is no Presiding Officer posted or working in the Debts Recovery Tribunal, wherein, the petitioner has to file SARFAESI application.

2. The prayer in this writ petition is to quash the order dated 28.01.2022 passed in CrI.M.P.No.5 of 2022, by the learned Chief Judicial Magistrate, Sivagangai and to direct the respondent-Bank to extend the OTS scheme in respect of petitioner's dues.

3. According to the petitioner, he is the Proprietor of M/s.Bharakath Modern Rice Mill situated at No.9-8-3, Colony Road, Pudhuval, Karaikudi Taluk, Sivagangai District. On 18.11.2017, he availed cash credit facility to the tune of Rs.4.85 Crores from the respondent-Bank in order to develop the rice mill. He also executed loan agreements on 11.08.2017 and executed equitable mortgage deed in favour of the respondent-Bank. When COVID-19 pandemic situation



followed by the lockdown imposed by the State and Central Governments created economic crisis all over the world, the petitioner also suffered the same. As a result, his account was classified as Non Performing Asset and thereafter, he was issued with a notice under Section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity "SARFAESI Act") followed by a notice under Section 13(4) of SARFAESI Act and thereafter, auction was also conducted. But, none was there to take part in the auction. Thereafter, the respondent-Bank filed a petition in CrI.M.P.No.5 of 2022 before the learned Chief Judicial Magistrate, Sivagangai, under Sections 14(1) and 14(2) of SARFAESI Act, to appoint an Advocate Commissioner to take possession of the mortgaged property. In the said petition, the learned Chief Judicial Magistrate has issued summons on 28.01.2022 directing the petitioner to appear before the Court for hearing on 04.02.2022. Challenging the same, the present writ petition has been filed.

4. The learned counsel for the petitioner would submit that the petitioner is prepared to deposit a sum of Rs.1 Crore by entering into the scheme of OTS. As the respondent-Bank liberally extends the scheme of OTS to several persons, the petitioner may also be extended the scheme of OTS.

5. The learned counsel appearing for the respondent-Bank vehemently objected the above contention of the petitioner and would submit that the writ petition is not legally maintainable, since the summons issued by the learned Chief Judicial Magistrate, Sivagangai cannot be questioned before this Court.

6. We also find merit on the submission of the learned counsel appearing for the respondent-Bank. Therefore, the petitioner is granted liberty to approach the respondent-Bank with the same proposal. If the petitioner is able to show his bona fide by depositing a substantial amount, his proposal may be considered by the respondent-Bank.

7. With the above observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Vacational Officer/
Assistant Registrar

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/ /2022

Sub Assistant Registrar(CS)

krk / abr

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To:

- 1.The Chief Judicial Magistrate,
Sivagangai.
- 2.The Authorized Officer,
State Bank of India,
Stressed Assets Recovery Branch,
Madurai.

+1 CC to M/s.A.R.M. RAMESH, Advocate (SR-23523[F] dated
06/05/2022)

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