



W.P.(MD)No.15384 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.07.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
and
THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.P.(MD)No.15384 of 2022
and
W.M.P.(MD)No.11100 of 2022

1.Bala Ganesan
2.B.Sengoda Nagarajan ... Petitioners

Vs.

The Authorised Officer,
Tamilnad Mercantile Bank Ltd.,
Nagercoil Branch,
229-A, Charles Miller Street,
College Road,
Nagercoil – 629001. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus forbearing the respondents from proceeding further with the possession notice dated 31.03.2022 pending hearing of the appeal before the Honourable Debts Recovery Tribunal, Madurai.

For Petitioners :Mr.S.R.Rajagopal
Senior Counse for
Mr.Makesh KUMaravel

For Respondent :Mr.N.Dilip Kumar



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ORDER

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(Order of the Court was made by **S.S.SUNDAR, J.**)

This Writ Petition is filed for issuance of Writ of Mandamus forbearing the respondents from proceeding further with the possession notice, dated 31.03.2022, pending Sarfaesi Application which has also been presented before the Debts Recovery Tribunal, Madurai, which is yet to be numbered.

2. Heard Mr.S.R.Rajagopal, learned Senior Counsel for the petitioners and Mr.N.Dilip Kumar, learned standing counsel for the respondent bank.

3. By consent of parties, this writ petition is disposed of at the admission stage itself.

4. It is reported before this Court that the recovery officer of the bank has also issued a sale notice, dated 22.06.2022, fixing the date of auction on 29.07.2022. Since the possession notice itself is challenged before the Debts Recovery Tribunal, the learned Senior Counsel appearing for the petitioners states that the sale



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notice will also be challenged before the Debts Recovery Tribunal.

However, he has expressed the practical difficulty in view of the position that no Presiding Officer is functioning as on date. Though an Officer is assigned to be in-charge of the Debts Recovery Tribunal, Madurai, it is stated that the petitioners' Sarfaesi Application is not likely to be taken up within a short time.

5. From the facts narrated by the learned Senior Counsel appearing for the petitioners and the learned standing counsel appearing for the respondent bank, this Court finds that a sum of Rs.4,88,50,236.79/- was the amount due as on 31.03.2022. It is also admitted that at the request of the petitioners to waive the penal interest and other charges, the petitioners were required to remit a sum of Rs.78 lakhs and odd. Even thereafter, the bank has demanded a further sum of Rs.9 lakhs and odd which was latter reduced to Rs.8,85,000/- for considering the request of the petitioners to seek waiver of penal interest.

6. It is admitted that the respondent bank after receiving substantial payment of around Rs.86 lakhs and odd, have issued a sale notice fixing the date of auction on 29.07.2022.



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7. The learned Senior Counsel appearing for the petitioners represented that the petitioners are running a Floor Mill and the request of the petitioners to give no-overdue certificate to enable the petitioners to run the Mill and to get business with its regular dealers and suppliers has not been considered, even though the respondent bank has agreed to give no-overdue letter upon payment of further amount which the petitioner had paid.

8. Since the petitioners have shown their bonafides by making substantial payment in the recent past to get no-overdue letter and for waiver of interest, this Court is unable to doubt the bonafides of the petitioners for the present.

9. Since the respondent bank has expressed their difficulty in view of the RBI circular for once again restructuring the loan in favour of the petitioners, the petitioners' counsel undertakes that the petitioners are prepared to pay a sum of Rs.1,00,00,000/- in four monthly instalments or as may be directed by this Court.

10. It is also placed on record that the upset price for the secured asset is more than Rs.11 Crores and the liability has now



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been reduced to Rs.4.88 Crores. Hence, this Court is inclined to dispose of the writ petition with the following directions:

(i) There shall be an order of stay of all further proceedings pursuant to the possession notice as well as sale notice on condition that the petitioner pays a sum of Rs.25,00,000/- on or before 28.07.2022, a further sum of Rs.25,00,000/- on or before 29.08.2022, a further sum of Rs.25,00,000/- on or before 29.09.2022 and a further sum of Rs.25,00,000/- on or before 28.10.2022. In case of failure to remit any one of the instalments, the order of stay granted by this Court shall stand vacated and the respondent bank is at liberty to proceed further ignoring this order.

(ii) It is open to the petitioners to challenge the sale proceedings before the Debts Recovery Tribunal. It is open to the Tribunal, to consider the order passed by this Court and the payment made by the petitioners pursuant to this order, while passing orders in the Sarfaesi Application that may be filed by the petitioner or the one which is already filed by the petitioners. The payments that are remitted by the petitioners pursuant to this order will be treated as the one which is in compliance of the interim direction of the Tribunal when it considers the application independently.



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(iii) However, we make it clear that the Tribunal is at liberty to pass orders ignoring the order passed by this Court when the matter is listed before the Tribunal for hearing. In the meanwhile, it is also open to the petitioner to approach the bank either to get a no-overdue certificate or waiver of penal interest and other charges to reduce the amount or regularization of loan account or for one time settlement. In case the matter is not decided by the Tribunal in the interim application pending or to be filed by the petitioners, the bank shall not proceed further unless the proposal or offer submitted by the petitioner is duly considered and intimation is given to the petitioners.

No Costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [S.S.Y., J.]
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Index : Yes / No

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