BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.08.2022

CORAM

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

W.P(MD)No.17316 of 2022
and
W.M.P.(MD)No.12630 of 2022

1.V.Yazhini
2.S.Vellaiyan
3.S.Alagupillai ... Petitioners

Vs.

The Authorised Officer,
represented by its Chief Manager,
Bank of India,
Madsurai – 625 018. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned demand notice issued by the respondent bank under Section 13(2) of SARFAESI Act, vide Ref.BOI:MKI:ADV:SARFAESI:22-2-:01, dated 13.07.2022 and to quash the same as illegal and consequently, to direct the respondent bank to accept the One Time Settlement (OTS) and also to direct not to attach the petitioner's dwelling house.

For Petitioners :Mr.S.Arivalagan
For Respondent :Mr.C.Karthick

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ORDER

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

This Writ Petition is filed for issuance of a Writ of Ceriorarified Mandamus to quash the impugned demand notice issued under Section 13(2) of SARFAESI Act, dated 13.07.2022 and to direct the respondent bank to consider the petitioners' One Time Settlement offer and not to proceed against the dwelling house of the petitioners till such the said proposal is considered.

2.Heard Mr.S.Arivalagan, learned Counsel for the petitioners and Mr.C.Karthick, learned Counsel, who takes notice on behalf of respondent. By consent of both parties, the above Writ Petition is taken up for final disposal at admission stage itself.

3.The petitioners 1 and 2 have availed an educational loan and the total amount due as on 30.03.2022 is Rs.20,73,654/-. The learned Counsel for the petitioners states that the petitioners are prepared to settle the entire amount within a period of six months. The learned Counsel for the petitioners also produced before this Court a demand draft for a sum of Rs.2,00,000/-, drawn in favour of the respondent bank to show their *bona fide*.

4.The learned Counsel for the respondent bank submits that this Court may not entertain a Writ Petition challenging the demand notice issued under Section 13(2) of SARFAESI Act. However, the present Writ Petition is not only challenging the impugned notice, but also for issuing a direction to the respondent to consider the petitioner's representation for One Time Settlement, as they are prepared to deposit substantial amount, and for concession from paying penal interest and other charges, which would be mulcted, if the petitioners are treated as chronic defaulters.

5.Considering the facts and circumstance of the case, this Court is of the view that the petitioners have shown their *bona fide*. Hence, instead of keeping the Writ Petition pending, this Court desirous of disposing of the Writ Petition with the following directions:

(1)The petitioner is permitted to deposit the demand draft for a sum of Rs.2,00,000/- drawn in favour of the respondent bank directly to the respondent in due course and further directed to pay a sum of Rs.2,75,000/- on or before 02.09.2022 and a further sum of Rs.2,50,000/- on or before 03.10.2022.

(2)In case the petitioners fail to pay any one of the instalments, in the manner directed above, it is open to the respondent bank to proceed with further in accordance with law ignoring this order.

(3)In case the petitioners deposit the amount as directed above, the respondent is directed to consider the representation of the petitioners either for waiver of interest or One Time Settlement or for restructuring the loan and other concession, as may be permissible under the guidelines of Reserve Bank of India or the norms applicable to the respondent bank and the respondent bank shall pass appropriate orders in accordance with law.

(4)Till such time an order is passed on the representation of the petitioner and the same is communicated to the petitioner, the respondent bank shall not initiate any coercive action against the petitioners.

6.The Writ Petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] **[S.S.Y., J.]**
03.08.2022

Index : Yes / No (1/2)

cmr

S.S.SUNDAR, J.

and

S.SRIMATHY, J.

cmr

W.P(MD)No.17316 of 2022

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(1/2)