BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.08.2022

CORAM

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

W.P(MD)No.17950 of 2022
and
W.M.P.(MD)No.13106 of 2022

1.V.Kandasamy
2.K.Kuzanthalayi ... Petitioners

Vs.

The Authorised Officer,
Housing Development Finance
Corporation Limited (HDFC Ltd),
No.406, Sakthi Sivam Plaza,
Pumping Station Road,
9th Cross Street, K.K.Nagar,
Madurai. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari, to call for records pertaining to the proceedings initiated by the Respondent under the SARFAESI Act, 2002 in the impugned order passed by the Learned Chief Judicial Magistrate, Karur, vide his order in Cr.M.P.No.504 of 2022 dated 18.07.2022 and further its connected proceedings under SARFAESI Act by the respondent and quash the same.

For Petitioners : Mr.A.George Stephen Kanikkairaj

For Respondent : Mr.Pala Ramasamy
Standing Counsel

* * *

ORDER

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

Challenging the order passed by the Chief Judicial Magistrate, Karur, in Cr.M.P.No.504 of 2022, dated 18.07.2022, in the application filed by the respondent under Section 14 of SARFAESI Act, the above Writ Petition is filed.

2. Heard Mr.A.George Stephen Kanikkairaj, learned counsel for the petitioners and Mr.Pala Ramasamy, learned Standing Counsel for the respondent. By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself.

3. Learned counsel appearing for the petitioners states that as against the amount borrowed viz., Rs.19,00,000/-, the petitioners have already paid more than Rs.8,00,000/-.

4. Learned Standing Counsel for the respondent, however, submits that the petitioners have committed default in paying the loan amount and the account was declared NPA even in 2018. As a result, the respondent claims Rs.29,18,682/- as on date.

5. Learned counsel for the petitioners submits that the petitioners committed default in payment only during COVID – 19 pandemic and they were making regular payments initially for a period of four years.

6. This Court is unable to believe that the loan account of the petitioners was declared NPA only during COVID – 19 pandemic. However, learned counsel for the petitioners states that the petitioners are prepared to pay substantial amount to the loan account to reduce the liability so that the respondent financial institution may consider petitioners' proposal for One Time Settlement or for discharge of entire loan amount within a reasonable time.

7. In these circumstances, this Court is inclined to dispose of the Writ Petition in the following lines:-

(i) Upon the petitioners paying a sum of Rs.1,00,000/- (Rupees One Lakh only) within a period of two weeks from the date of receipt of a copy of this order, a sum of Rs.2,25,000/- (Rupees Two Lakhs and Twenty Five Thousands only) on or before 21.09.2022, a sum of Rs.2,25,000/- (Rupees Two Lakhs and Twenty Five Thousands only) on or before 24.10.2022 and a further sum of Rs.2,00,000/- (Rupees Two Lakhs only) on or before 22.11.2022, the respondent financial institution shall not proceed further to take possession of the secured assets pursuant to the impugned order.

(ii) In case the petitioners commit any default in paying any one of the instalments, it is open to the respondent financial institution to proceed further in accordance with law ignoring this order.

(iii) If the petitioners make payment as indicated above, they may approach the respondent and submit a representation within a period of two weeks from the payment of last instalment either for waiver of penal interest or for One Time Settlement or for restructuring the loan or for any other concession, as may be permissible under the guidelines of Reserve Bank of India or the norms applicable to the respondent bank.

(iv) The respondent financial institution shall consider the same and pass appropriate orders in accordance with law.

(v) Till such time, the respondent bank consider the representation of the petitioners and communicate the decision taken to the petitioners, the respondent financial institution shall not initiate any coercive action against the petitioners.

8. 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.]
11.08.2022

Index : Yes / No

sj

S.S.SUNDAR, J.

and

S.SRIMATHY, J.

sj

W.P(MD)No.17950 of 2022

11.08.2022