



W.P.(MD)No.19716 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 25.08.2022

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

W.P.(MD)No.19716 of 2022
and
W.M.P(MD)No.14396 of 2022

M.Vijayarajan

... Petitioner

Vs.

1.The Chief Manager/
Authorized Officer
The State Bank of India,
Stressed Asset Recovery Branch,
No.8, Vinayaganagar Branch 1st Floor,
Madurai District.

2.The Branch Manager,
The State Bank of India,
RACC Theni Branch,
Periyakumal Road,
Theni District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records in pursuant to the impugned order dated 08.04.2022 made in Cr.M.P.No.7488 of 2021 on the



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file of the Chief Judicial Magistrate, Theni, filed by the 1st respondent bank under Section 14 of SARFAESI Act and quash the same as an illegal.

For Petitioner :Mr.S.T.Sasidharan Tamilkani
For Respondents :Mr.P.Pethurajesh
Standing Counsel for Bank

ORDER

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

Challenging the order of the learned Chief Judicial Magistrate, Theni, in Cr.M.P.No.7488 of 2021, dated 08.04.2022, filed by the first respondent Bank, under Section 14 of SARFAESI Act, the above writ petition is filed.

2.Heard Mr.S.T.Sasidharan Tamilkani, learned counsel appearing for the petitioner and Mr.P.Pethurajesh, learned Standing Counsel appearing for the respondents.

3.By consent, this writ petition is taken up for final hearing at the admission stage itself.



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4.The petitioner borrowed a housing loan of Rs.26,00,000/- from the second respondent Bank. Though it is stated that the petitioner was regularly paying the monthly installment, without any default, due to COVID-19 Pandemic situation, he was unable to run his business and that he suffered a huge loss. It is the case of the petitioner that he met with an accident and suffered head injury and bone fracture. Several reasons are stated in the affidavit filed in support of the writ petition, justifying the non-payment of monthly installment. Though it is admitted that the demand notice was issued on 10.01.2019 and possession notice was issued on 20.09.2019, the petitioner's case is that he approached the second respondent Bank in person and raised some objections regarding the actual dues. It is admitted that E-auction sale notice was issued earlier fixing the date of sale on 26.03.2020, but, no sale took place on that date for want of bidders. However, the application under Section 14 of SARFAESI Act was filed by the respondent Bank to take physical possession of the property secured. Though several grounds are raised by the petitioner in the affidavit filed in support of the writ petition challenging the order of the learned Chief Judicial Magistrate, the petitioner's intention was only to



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settle the dues of the respondent Bank by negotiation.

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5.The learned counsel appearing for the petitioner sates that the petitioner is prepared to reduce the liability by 25% of the total outstanding in 4 equal monthly installments.

6.A detailed counter affidavit is filed by the respondent Bank even at the stage of admission. In the counter affidavit, the respondent bank denied all the averments made in the affidavit filed by the petitioner in support of this petition. The liability as on 24.08.2022 is Rs. 34,70,000/-. The respondent admitted that the reserve price fixed for the property secured is Rs.32,65,000/-, even when the sale notice was issued in the month of March 2022.

7.Considering the value of the secured asset, this Court is of the view that the value of the security is not less than actual amount due from the Bank. Though the learned counsel appearing for the respondent Bank raised an objection regarding the maintainability of the writ petition as



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against the order of the learned Chief Judicial Magistrate, this Court is inclined to entertain the writ petition for the reason that an opportunity can be given to the petitioner to reduce the liability without affecting the security. The writ petition is disposed of in the following reasons:-

(i)The respondent Bank shall defer taking possession for a period of six months, provided the petitioner pays a sum of Rs.2.25 lakhs(Rupees Two Lakhs Twenty Five Thousand only) on or before 23.09.2022 and a further sum of Rs.2.25 lakhs on or before 25.10.2022 and a further sum of Rs.2.25 lakhs on or before 25.11.2022 and further a sum of Rs.2 lakhs on or before 23.12.2022 directly to the respondent Bank.

(ii)In the event, the petitioner makes payment as indicated above, the respondent Bank is directed to consider the representation of the petitioner for One Time Settlement or for restructuring the loan or for wavier of penal interest or for regularization of loan account and for other concessions, as may be permissible as per the norms of RBI applicable to the respondent Bank.

(iii)In case, the petitioner fails to make any one of the installments as indicated above, it is open to the respondent Bank to



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proceed further in accordance with law ignoring this order.

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(iv) On making such payment, the respondent Bank shall consider and pass appropriate orders on the representation or proposal of the petitioner in accordance with law and communicate the same to the petitioner.

(v) Till such time, the respondent Bank communicate the order, it shall not initiate any coercive action as against the petitioner.

Accordingly, this Writ Petition is disposed of. No costs.
Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [S.S.Y., J.]
25.08.2022

Index: Yes/No
Internet: Yes
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