BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.09.2022

CORAM

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

W.P(MD)No.20200 of 2022
and
W.M.P.(MD)No.14687 of 2022

M/s.Shri Narayana Traders,
Represented by Partner,
Smt. Chitra,
No.261, Dharmapuram Street,
Rajapalayam – 626 117. ... Petitioner

Vs.

1.The Debts Recovery Tribunal,
IV Floor, Kalyani Tower,
Melur Road,
Madurai.

2.The Authorized Officer,
State Bank of India,
Stressed Asset Recovery Branch (SARB),
Vinayaga Nagar Branch (Upstairs),
No.8, Dr.Ambedkar Road,
Madurai – 625 020. ... Respondents

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 impugned Auction Sale Notice issued by the 2nd Respondent under Section 13(4) of the SARFAESI Act, dated 05.08.2022 fixing the date of sale on 16.09.2022, for the subject properties and quash the same.

For Petitioner	: Mr.S.Suresh For M/s.Aiyar and Dolia
For 1st Respondent	: Mr.T.Ashokkumar Ram Standing Counsel
For 2nd Respondent	: Mr.N.Dilipkumar Standing Counsel

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<u>O R D E R</u>

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

Challenging the impugned sale notice, fixing the date of auction on 16.09.2022 between 10.30 a.m. to 12.00 noon, issued by the second respondent, the above Writ Petition is filed.

2. Heard Mr.S.Suresh, learned counsel for the petitioner, Mr.T.Ashokkumar Ram, learned Standing Counsel for the first respondent and Mr.N.Dilipkumar, learned Standing Counsel for the second 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 petitioner states that the petitioner had paid substantial amount to discharge the educational loan, which was obtained by showing the same property as security. It is also submitted that the petitioner had also paid a sum of Rs.20,28,000/- on 11.07.2022 to discharge another loan, which was also obtained by showing the same secured asset as security. He would further submit that the loan account was declared NPA in the year 2021 and that the non-payment of the loan amount was due to COVID-19 pandemic.

4. Learned Standing Counsel appearing for the respondent bank submitted that though the petitioner has promised to repay the loan on several occasions did not come forward to pay significant amount after the loan account was declared NPA. He further submitted that challenging the possession notice, the petitioner has approached the Tribunal and that the petitioner has not offered sufficient reason why he has not chosen to challenge the sale Notice before the Tribunal. It is also stated that the SARFAESI Applications pending before the Debts Recovery Tribunal, Madurai, are now being taken by the Debts Recovery Tribunal, Coimbatore one day in a week and several matters are posted for hearing before

the Debts Recovery Tribunal, Coimbatore and there is no bar or compelling reason for the petitioner to choose this forum to challenge the sale notice.

5. However, this Court noticed that the Tribunal at Coimbatore is unable to take up all the matters of Tribunal at Madurai and it may be appropriate for this Court to entertain writ petition in certain cases, where the rights of the parties are likely to be affected on account of delay in getting interim orders from the Tribunal.

6. Be that as it may, learned counsel appearing for the petitioner states that the petitioner is prepared to pay 25% of the total outstanding to reduce the liability, in case this Court by an order defer the impugned sale.

7. Considering the various facts and circumstances, this Court is of the view that the petitioner can be shown some indulgence. Hence, this Court is inclined to dispose of the Writ Petition in the following lines:-

(i) The second respondent shall defer sale pursuant to the impugned sale notice, provided the petitioner pays a sum of

Rs.50,00,000/- (Rupees Fifty Lakhs only) on or before 31.12.2022. Out of the said sum of Rs.50,00,000/-, the petitioner is directed to pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) on or before 15.09.2022, and the remaining amount shall be paid by making payments not less than Rs.10,00,000/- (Rupees Ten Lakhs only) on 15.10.2022, 15.11.2022 and 15.12.2022 and the balance amount short of Rs.50,00,000/- shall be deposited on or before 31.12.2022.

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

(iii) If the petitioner makes payment as indicated above, they may approach the bank 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 bank shall consider the same and pass appropriate orders in accordance with law.

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

7. The Writ Petition is disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

8. Post the matter on 16.09.2022, for reporting compliance.

[S.S.S.R., J.] [S.S.Y., J.]
01.09.2022

Index : Yes / No

sj

To

1.The Debts Recovery Tribunal,
IV Floor, Kalyani Tower,
Melur Road,
Madurai.

S.S.SUNDAR, J.

and

S.SRIMATHY, J.

sj

W.P(MD)No.20200 of 2022

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