IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2023

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.4469 of 2023
and W.M.P.No.4492 of 2023

Ganesan Paranthaman .. Petitioner

Vs

M/s.ICICI Bank Limited,
rep. by its Authorized Officer,
24th South Phase, Arihant Towers,
2nd Floor, East Wing, BLG,
Ambattur Industrial Estate,
Ambattur, Chennai-600 058. .. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the respondent to accept the petitioner's payment on instalment basis and release the petitioner's original title documents after payment of entire dues.

For the Petitioner : Mr.Sethur Suresh

ORDER

(Order of the court was made by the Hon'ble Acting Chief Justice)

This writ petition has been filed by the petitioner to direct the respondent bank to accept the petitioner's payment on installment basis and release his original title documents after payment of entire dues.

2. Learned counsel for the petitioner submitted that the petitioner and one Tasneem Kouser stood as guarantors for the credit facility availed of by Mohammed Zakir Hussain, Proprietor of M/s.Aysha Exports. He would submit that on 10.2.2023, the petitioner has submitted a proposal for one-time settlement to the respondent bank and despite receipt of the proposal, the respondent has not responded till date. Hence, the petitioner has been advised to file the writ petition.

3. This court is not inclined to entertain the writ petition in view of the law enunciated by the Supreme Court in the case of ***Bijnor Urban Cooperative Bank Limited v. Meenal Agarwal and others,***

2021 SCC OnLine SC 1255, wherein it has been emphatically held that this court exercising jurisdiction under Article 226 of the Constitution of India cannot direct a bank or financial institution to positively grant the benefit of OTS scheme and such decision should be left to the commercial wisdom of the bank or financial institution. It is profitable to refer to the following observations made by the Supreme Court in the decision referred supra:

> *"30. **The sum and substance of the aforesaid discussion would be that no writ of mandamus can be issued by the High Court in exercise of powers under Article 226 of the Constitution of India, directing a financial institution/bank to positively grant the benefit of OTS to a borrower.** The grant of benefit under the OTS is always subject to the eligibility criteria mentioned under the OTS Scheme and the guidelines issued from time to time. If the bank/financial institution is of the opinion that the loanee has the capacity to make the payment and/or that the bank/financial institution is able to recover the entire loan amount even by auctioning the mortgaged property/secured property, either from the loanee and/or guarantor, the bank would be justified in refusing to grant the benefit under the OTS Scheme. Ultimately, such a decision should be left to the*

commercial wisdom of the bank whose amount is involved and it is always to be presumed that the financial institution/bank shall take a prudent decision whether to grant the benefit or not under the OTS Scheme, having regard to the public interest involved and having regard to the factors which are narrated hereinabove.

31. ***In view of the aforesaid discussion and for the reasons stated above, we are of the firm opinion that the High Court, in the present case, has materially erred and has exceeded in its jurisdiction in issuing a writ of mandamus in exercise of its powers under Article 226 of the Constitution of India by directing the appellant-Bank to positively consider/grant the benefit of OTS to the original writ petitioner.*** *The impugned judgment and order passed by the High Court is hence unsustainable and deserves to be quashed and set aside and is accordingly quashed and set aside."*

[emphasis supplied]

4. That apart, it is pleaded by learned counsel for the petitioner that the proceedings under Section 14 of the Act initiated at the instance of the respondent/bank have been allowed by the learned Chief Judicial Magistrate, Chengalpet, by order dated 5.9.2022 and

the petitioner apprehends that possession of his property will be taken over by the respondent.

5. The remedy of the petitioner as against the order passed under Section 14 of the Act is before the Debts Recovery Tribunal and bypassing such effective alternative remedy available, the petitioner cannot be permitted to file a writ petition.

For the foregoing reasons, the writ petition is dismissed. There will be no order as to costs. Consequently, W.M.P.No.4492 of 2023 is closed.

(T.R., ACJ.) (D.B.C., J.)
15.02.2023

Index : Yes/No
Neutral Citation : Yes/No
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To:

The Authorized Officer,
M/s.ICICI Bank Limited,
24th South Phase, Arihant Towers,
2nd Floor, East Wing, BLG,
Ambattur Industrial Estate,
Ambattur, Chennai-600 058.

THE HON'BLE ACTING CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.

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