IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.No.19672 of 2023
and WMP.Nos.18938 & 18940 of 2023

1.S.Karthikeyan
2.Jayalakshmi .... Petitioners

Vs

1.The General Manager
(Complaints Cell)
Reserve Bank of India
Rajaji Salai, Chennai - 600 001.

2.The Authorized Officer
IndusInd Bank Ltd.,
Registered Office at :
No.2401, General Thimmaiah Road
(Contonment), Pune - 411 001.

3.The Zonal Officer
IndusInd Bank Ltd.,
New No.34, Old No.159-160
G.N.Chetty Road
T.Nagar, Chennai - 600 017.

4.The Branch Manager
IndusInd Bank Ltd.,
No.40/A, Church Street
Sri Rajalakshmi Stores
Karaikkal - 609 602. .... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent 2 to 4, in "Notice to the Borrower and Co-Borrower" dated 31.05.2023 received on 01.06.2023 and the undated "Post Seizure Notice to the borrower and the Co-Borrower" received on 02.06.2023 terminating Loan Agreement No.TPK00333E dated 28.07.2022 and quash the same, and consequently direct the fourth respondent to hand over vehicle JCB 140 NXT TRACKED EXCAVATOR AC with Engine No.84977468, Chassis No.PUNJD14AEN3161216 to the petitioners by regularizing the vehicle loan account of the petitioners, in view of execution of the Memorandum of Deposit of Title Deed dated 18.07.2022 registered on 25.07.2022 in Document No.1591 of 2022 on the file of the SRO, Valangaiman as security for the repayment of the vehicle loan in Loan Agreement TPK00333E by the second petitioner, the remedy available to the 2nd to 4th respondents is for the enforcement of security interest under SARFAESI Act, 2002 and all EMI dues have been paid till date.

For Petitioners : Mr.S.Sathiaseelan
For Respondents : Ms.Meera Gnanasekaran
for R2 to R4

ORDER

The petitioners have obtained a loan for purchase of JCB and claims that it was over secured, few times more than the value of the vehicle. The bank also secured the loan by way of hypothecation of the very JCB. While so, the petitioners are stated to have committed default in payment of his monthly instalment for a couple of months. Their grievance is that JCB was force - removed from their custody by the bank about 12.00 a.m. (midnight) on 30.05.2023.

2 Mr.S.Sathiaseelan, learned counsel submits that the petitioners have since paid all the arrears of instalment, they are not in default. However, the bank has not released the vehicle which will impair the value of the vehicle as it is left uncared and unmaintained. He now requires the JCB for its maintenance, since according to him, if the same is not carried out, the warranty will lapse.

3. Ms.Meera Gnasasekaran, learned counsel appearing for the respondents 2 to 4 submitted that the JCB was seized in accordance with the terms of the contract. The learned counsel also added that the apprehension of the petitioners that the warranty might not be extended is incorrect, as the respondents itself have serviced the JCB.

4.The learned counsel for the petitioners submitted that the petitioners had already paid the entire loan instalments and that they have also given their immovable property as security for repayment, besides hypothecating the JCB.

5. While the creditor is entitled to the securities that it possesses, there must be some degree of fairness in dealing with the security. After all, if the JCB is seized then it literally deprives the petitioners of an opportunity to raise finances by using the JCB. Therefore, at one level, the opportunity to generate income from the JCB is now curtailed, which implies that the petitioners may not be able to raise the necessary funds to repay the creditor.

6. The counsel for the respondents 2 to 4 now submits that since the filing of this petition, the petitioners have approached the bank and an understanding has also been arrived between the petitioners and the bank. While the terms for return of vehicle has been broadly arrived between the parties, the Bank had an apprehension of losing its securities, since monthly instalments were paid not by the petitioners, but by a third party. It also apprehends that somebody could tamper with the machinery. The learned counsel also added that such third party who has been paying the EMI has

also come forward to offer an additional guarantee for the same, and the matter is being processed.

7. In view of the development that has now arrived between the parties, this Court only considers it appropriate to let the matter get resolved peacefully between the parties. Since, the relationship between the parties is now being revived, the notice under challenge automatically appears to be losing its effect.

8.To conclude, this writ petition is disposed of with a direction that once the requisite guarantee and other securities have been provided to secure the interest of the Bank over the JCB, the Bank will be under an obligation to return the vehicle as a fair banker. No costs. Consequently, connected miscellaneous petitions are closed.

26.07.2023

Index : Yes / No
Speaking order / Non-speaking order
ds

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