IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Petition No.26775 of 2019
and
WMP Nos. 26155 & 26156 of 2019

1. Seeyalan
2. Karpagam .. Petitioners

Versus

1. The Assistant General Manager,
Can Fin Homes Ltd., (Canara Bank),
1st Floor, Spencer Tower Annexe,
No.770A, Anna Salai,
Chennai - 600 002.

2. The Authorized Officer,
Can Fin Homes Ltd.,
Plot No.28, Ground Floor,
Lawyer Krishnasamy Street,
Vedachalam Nagar
Chengalpattu - 603 001 .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamas, directing the respondents to consider the petitioners' representation dated 20.05.2019 and thereby direct the respondents to explore the possibility of one time settlement (OTS) offer to the tune of a sum of Rs.4,00,000/- (Rupees Four Lakhs), towards full and final settlement of entire balance loan amount in respect of the Loan Account No.1682011000096, which is on the file of the second respondent.

For Petitioner : No appearance
For R1 : No appearance
For R2 : Mr. AR. M. Arunachalam

ORDER

(Order of the Court was made by R. MAHADEVAN, J.)

Seeking a direction to the respondents to consider the petitioners' representation dated 20.05.2019 submitted to the respondents to accept the one time settlement offer made by them to the tune of Rs.4,00,000/- (Rupees Four Lakhs), towards full and final settlement of entire balance loan amount, borrowed by their son, the present writ petition is filed by the petitioners.

2. Today, when the writ petition is taken up for consideration, there is no representation for the petitioners.

3. The learned counsel appearing for the second respondent, placing reliance on the additional counter affidavit, submitted that the petitioners' elder son Late. Sakthivel availed a sum of Rs.20,00,000/- as loan on 31.12.2014 from the respondents/bank by creating equitable mortgage of the property in question. Unfortunately, few days after availing the loan, on 25.01.2015, the petitioners' son died. The sum of Rs.9,84,000/- paid to the borrower by the Insurance Company as well as the five instalments paid at Rs.20,000/- each to

the loan account were duly credited to the loan account. As on May 2015, a sum of Rs.11,05,394/- was payable towards the loan. The petitioners remained silent for about four years without taking any steps to close the loan account. However, during May 2019, they have submitted the representation dated 20.05.2019 for one time settlement of the loan account. It is further submitted that the wife of the borrower/daughter in law of the petitioners, holds 2/3 share in the mortgaged property and the Bank also had discussion with her. The Bank has also taken a sympathetical view and inclined to waive the compound interest and penal interest in view of the sudden death of the borrower from Rs.16,50,077/- to Rs.15,00,000/-. On 01.11.2019, the Bank had discussion with the petitioners and their daughter in law, but they have offered to pay only a sum of Rs.5,00,000/-. In such circumstances, the one time settlement offered by the petitioners is not feasible of consideration of the bank, according to the learned counsel for the second respondent.

4. It is evident from the affidavit of the petitioners and the submissions of the learned counsel for the second respondent that the petitioners have submitted a representation to the respondents on 20.05.2019 to accept one time settlement of Rs.5,00,000/-, which was further reduced to Rs.4,00,000/-. On the other hand, the bank, even after waiving interest and

penal interest, demands OTS of Rs.15,00,000/- as against the outstanding balance amount of Rs.18.37 lakhs as on November 2019, the date of filing the additional counter affidavit. There is a contract between the deceased son of the petitioners and the respondents to repay the loan amount subject to certain terms and conditions and if the conditions are breached, this Court cannot interfere with the same. Further, it is settled law that in cases involving enforcement of contractual obligations and for their adjudication, the writ Court under Article 226 of The Constitution of India is not the proper forum. Moreover, when the Bank did not agree with the one time offer made by the petitioners, this Court cannot compel the Bank to accept the same. In view of the above, we are not inclined to issue a Mandamus, as prayed for by the petitioners, to consider their representation dated 20.05.2019 submitted to the respondents.

5. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

[R.M.D., J.] **[M.S.Q., J.]**

01.02.2023

Index : Yes / No
Internet : Yes / No
av/rsh

To

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