



W.P(MD)No.2757 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 22.02.2023

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

W.P(MD)No.2757 of 2023
and
W.M.P(MD)No.2522 of 2023

M.Elango

... Petitioner

Vs.

1.The Authorized Officer / Chief Manager,
Indian Bank,
A-4, Pasumpon Street,
Tirunagar, Madurai-625 006.

2.The Branch Manager,
Indian Bank,
Tirunagar Branch,
Madurai District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the impugned sale notice issued by the first respondent dated 25.01.2023 and quash the same as illegal and pass such further or other orders, as this Court.

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For Petitioner : Mr.T.Lenin Kumar

For Respondents : Mr.C.Karthick
Standing Counsel

ORDER

[Order of the Court was delivered by **L.VICTORIA GOWRI, J.**]

Challenging the sale notice issued by the first respondent dated 25.01.2023, the petitioner has filed this writ petition to quash the same.

2. The petitioner is the proprietor of M/s.KBK Process situated at Samanatham Village, Madurai District. For the said firm, he entered into several loan agreements with the second respondent Bank to a tune of Rs.66,26,000/- on four different dates and four different loan accounts. Due to non payment of loan, the loan availed by him was declared as Non-performing asset, followed by the issuance of notice under Section 13(2) of the SARFAESI Act, 2002, on 09.06.2022 calling upon the



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petitioner to pay a sum of Rs.69,25,255/- within sixty days from the date of receipt of the copy of notice. On 26.08.2022, the second respondent issued possession notice under Section 13(4) of the SARFAESI Act, 2002 for the total due of Rs.71,49,060/- as on 25.08.2022. Challenging the same, the petitioner has filed W.P(MD)No.21363 of 2022 before this Court, in which this Court passed an order of interim stay on 07.09.2022 with the condition that the petitioner shall deposit a sum of Rs.11,00,000/- on or before 01.10.2022 and a further sum of Rs. 11,00,000/- on or before 01.11.2022.

3. The petitioner paid the said amount as directed by this Court on 16.11.2022. When the said writ petition was came up for hearing, the said writ petition was disposed of by this Court by directing the petitioner to pay the remaining amount in six consecutive monthly installments, with a further direction that the first installment shall be paid on or before 15.12.2022 and the consecutive amount shall be paid on or before 15th day of every calendar month.



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4. However, the petitioner could not comply with the said aforesaid conditions. The first respondent issued fresh sale notice dated 25.01.2023 for recovery of Rs.49,67,973/- and thereby brought the said properties for auction by fixing the sale date on 01.03.2023. On receipt of the said notice, the petitioner paid a sum of Rs.16,00,000/- on 27.01.2023 and requested the second respondent to re-schedule the loan account. The second respondent's refusal to re-schedule the loan account, prompted the petitioner to file this writ petition challenging the sale notice dated 25.01.2023.

5. On 10.02.2022, when this case came up for hearing, the learned Counsel for the petitioner agreed to comply with the earlier order passed by this Court in W.P(MD)No.21363 of 2022 dated 16.11.2022. The learned Counsel for the respondent Bank brought to the notice of this Court that the petitioner has not complied with the conditional order passed by this Court in W.P(MD)No.21363 of 2022 dated 16.11.2022 only then the property was brought for auction. The respondent Bank's counsel further submitted that only after the issuance of sale notice, dated

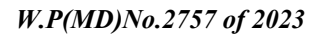


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25.01.2023 the petitioner has complied with two installments for a period of December and January. The learned Counsel for the respondent submitted that since the outstanding balance amount is Rs.33,94,489/- as on date, he insisted that the petitioner has to pay the installment due for the month of February, 2023. In view of accepting the submission made by the learned Counsel for the respondent Bank, the learned Counsel for the petitioner undertook to pay a sum of Rs.8,00,000/- to the respondent Bank on or before 16.02.2023 to show his *bonafide* and thereafter the writ petition was posted under the caption 'For Orders' on 20.02.2023. When the case was came up for hearing on 20.02.2023, the writ petitioner produced two receipts dated 14.02.2023 and 15.02.2023 respectively showing the payment of Rs.8,00,000/- to the respondent bank.

6. Heard the rival submissions made by the learned Counsels for the petitioner and the respondents carefully and perused the materials on record.



“(1) The first installment shall be paid on or before 15.03.2023 and the second installment shall be paid on or before 15.04.2023 and the third installment shall be paid on or before 15.05.2023 by the petitioner.

(2) Till such time, the respondent bank shall not take any coercive action against the petitioner.

(3) *If the petitioner fails to make payment of anyone of the above installment, the respondent may proceed further in the manner known to law.*



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(4) Till then the sale notice dated 25.01.2023 shall be kept in abeyance and the respondent bank shall not take any coercive action against the petitioner”.

8. In view of the above said directions, this writ petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

(D.K.K.J.,)

(L.V.G.J.,)

22.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Btr

To

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