BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD) No.5691 of 2023
and
W.M.P.(MD) Nos.5294 & 5296 of 2023

C.Kumar ... Petitioner

-vs-

The Authorized Officer
Tamilnad Mercantile Bank (TMB)
Padandhalmood Branch
Kanyakumari District ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the entire record pertaining to the impugned sale auction notice dated 15.02.2023 and scheduled conduct sale auction on 22.03.2023 at 03.00 p.m., and quash the same as illegal.

For Petitioner : Mr.PM.Vishnuvarthanan

For Respondent : Mr.N.Dilip Kumar, Standing Counsel

O R D E R

[Order of the Court was made by R.SUBRAMANIAN, J.]

Mr.N.Dilip Kumar, learned Standing Counsel, takes notice for the respondent – Bank.

2. The borrower has come up with this writ petition challenging the auction sale notice, dated 15.02.2023, issued by the respondent – Bank.

3. Learned counsel for the petitioner would submit that the petitioner would be able to close all the loan accounts, if he is granted sometime.

4. Learned Standing Counsel appearing for the respondent – Bank would submit that since the petitioner's loan accounts have been classified as "fraud accounts", as the money that was borrowed as overdraft for business purpose was diverted for other purpose, the respondent – Bank has initiated action against the Branch Manager for disbursal of the loans. Therefore, according to the learned Standing Counsel, the petitioner is not entitled to any indulgence.

5. The Bank has every right to take action against its officers, if there is any dereliction of duty on their part. As far as the mode of recovery is concerned, though the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, "SARFAESI Act") enable the Bank to sell the secured assets without the intervention of the Court, we are forced to intervene in this matter, because of the absence of Judicial Member in the Debts Recovery Tribunal, Madurai. If only the Debts Recovery Tribunal has been functioning, the petitioner would have got some interim relief from the said Tribunal. As it is always done by the Tribunals wherever the sale notices issued under the SARFAESI Act are challenged, some interim protection would have been granted to the petitioner. Considering the same, we find that the petitioner can be granted some interim protection subject to certain conditions.

6. Therefore, the writ petition is disposed of with the following directions:

(i) The petitioner shall pay a sum of Rs.7,50,000/- (Rupees seven lakhs and fifth thousand only) to the respondent – Bank, on or before 21.03.2023.

(ii) On such payment, the respondent – Bank shall defer the sale proceedings.

(iii) The balance amount shall be paid by the petitioner within a period of three months thereafter, either in instalments or lump sum.

(iv) The interest payable for the interregnum period and the cost of the sale shall be paid by the petitioner within the said three months period.

(v) The respondent – Bank can proceed further, if there is a default on the part of the petitioner in making the payments as directed above.

No costs. Consequently, connected miscellaneous petitions are closed.

[R.S.M., J.] **[L.V.G., J.]**

16.03.2023

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

Note to Office :
Upload the order in website by 17.03.2023.

krk

R.SUBRAMANIAN, J.
and
L.VICTORIA GOWRI, J.

krk

W.P.(MD) No.5691 of 2023
and
W.M.P.(MD) Nos.5294 & 5296 of 2023

16.03.2023