BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2023

CORAM:

THE HON'BLE MR.T.RAJA, THE ACTING CHIEF JUSTICE
and
THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

W.P.(MD)No.10237 of 2023
and
W.M.P(MD) Nos.9090 and 9091 of 2023

J.Jeyavel ... Petitioner

-vs-

M/s. Tamilnadu Mercantile Bank Ltd.,
Rep. by its Authorised Officer,
Mr.G.Padmanaban ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to calling for the records in pursuant to the impugned order dated 17.10.2022 made in Cr.M.p.No.1487 of 2022 on the file of Chief Judicial Magistrate, Madurai, filed by the respondent bank under Section 14 of SARFAESI Act and quash the same as illegal.

For Petitioner : Mr.S.T.Sasidharan Tamilkani

For Respondent : Mr.N.Dilip Kumar

ORDER

[Order of the Court was made by
The Hon'ble The ACTING CHIEF JUSTICE]

Challenging the order dated 17.10.2022, passed under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as ''the Act'') by the learned Chief Judicial Magistrate, Madurai, the petitioner has come forward with this writ petition.

2. The petitioner, Mr.J.Jeyavel, has borrowed a sum of Rs.80,00,000/- (Rupees Eighty Lakhs only) from the respondent – bank by mortgaging the schedule of properties shown in the impugned sale notice. The petitioner was running a business of manufacturing of wires. From the proceeds received from the other business, the petitioner decided to uplift the business and therefore, he borrowed the said loan from the respondent – bank. But, due to a huge loss suffered by the petitioner, he could not run the business successfully. It is stated that his wife also suffered

health issues and underwent treatment at that point of time. As a result, he spent huge amount towards her medical expenses. In view of the default committed by the petitioner, the respondent – bank classified his loan account as 'Non-Performing Asset' and issued a notice under Section 13(2) of the Act on 21.01.2021 insisting the petitioner to repay the loan dues of Rs.83,60,982.60/- (Rupees Eighty Three Lakhs Sixty Thousand Nine Hundred and Eighty Two and Sixty paisa only) as on 31.12.2021.

3. The petitioner approached the respondent – bank with the request not to initiate any legal proceedings against him. However, after few days, the respondent – bank initiated legal proceedings against the petitioner and issued a notice under Section 13(4) of the Act on 05.05.2022 asking the petitioner to repay the loan dues of Rs.83,60,982.60/- (Rupees Eighty Three Lakhs Sixty Thousand Nine Hundred and Eighty Two and Sixty paisa only) as on 31.12.2021 with further interest. Finally, the petitioner approached the Debts Recovery Tribunal, Madurai and filed S.A.No.354 of 2022 challenging the sale notice dated 17.09.2022. The Debts Recovery Tribunal passed an interim conditional order, dated 20.10.2022, directing the petitioner to pay

a sum of Rs.20,50,000/- (Rupees Twenty Lakhs and Fifty Thousand only) on or before 17.11.2022 and the second equal payment on or before 15.12.2022. Although the petitioner was able to comply with the conditional order by paying the first instalment, he was unable to comply with the second part of the conditional order i.e., the second instalment. Therefore, the respondent – bank has issued the second sale notice dated 20.12.2022. Aggrieved thereby, the petitioner filed S.A.No.7 of 2023 before the Debts Recovery Tribunal. Once again, the Debts Recovery Tribunal, appreciating the peculiar circumstances faced by the petitioner, passed the conditional order, dated 06.01.2023 directing the petitioner to pay a sum of Rs.18,00,000/- (Rupees Eighteen Lakhs only) on or before 06.02.2023 and another equal payment on or before 06.03.2023. As the petitioner suffered huge loss in view of the COVID-19 pandemic followed by the lockdown, the petitioner was unable to comply with the conditional order dated 06.01.2023. However, he has come before this Court by filing a writ petition in W.P(MD) No.2492 of 2022, and the same was also dismissed.

4. The petitioner has regrouped slowly and gradually and requested some time to repay the outstanding loan dues to

the respondent – bank.

5. Opposing the same, Mr.N.Dilip Kumar, learned counsel appearing for the respondent – bank would submit that though the petitioner was given sufficient opportunity to repay the loan dues, he was only able to pay the first installment and did not pay the second equal installment of Rs.20,50,000/- (Rupees Twenty Lakhs and Fifty Thousand only) on or before 15.12.2022, as directed by the Debts Recovery Tribunal on 20.10.2022 in S.A.No.354 of 2022. Therefore, the respondent – bank was constrained to issue the second sale notice, dated 20.12.2022. Once again, the petitioner approached the Debts Recovery Tribunal and obtained a conditional order, dated 06.01.2023. Regrettably, the petitioner did not comply with any of the conditions imposed in the order passed by the Debts Recovery Tribunal in S.A.No.7 of 2023. Therefore, when the Debts Recovery Tribunal has shown indulgence by passing the conditional order, dated 06.01.2023, without complying with the same, the petitioner cannot misuse the indulgence shown by the Debts Recovery Tribunal. If the petitioner had complied with the conditional order, the bank would not have issued the second sale notice. In the present case, without

complying with any one of the conditions imposed by the Debts Recovery Tribunal, the petitioner filed W.P(MD) No.2492 of 2022 before this Court, which was also dismissed. Therefore, no indulgence or leniency shall be shown in favour of the petitioner.

6. We find merits on the submissions of the learned counsel appearing for the respondent – bank. When the Debts Recovery Tribunal passed the conditional order, dated 20.10.2022, directing the petitioner to pay a sum of Rs.20,50,000/- (Rupees Twenty Lakhs and Fifty Thousand only) on or before 17.11.2022 and the another equal payment on or before 15.12.2022, he has not complied with the conditional order. Therefore, the respondent – bank issued the second sale notice, dated 20.12.2022. The petitioner, knowing fully that he has not complied with the second part of the conditional order passed by the Debts Recovery Tribunal in S.A.No.354 of 2022, filed the second S.A.No.7 of 2023. Fortunately, once again, considering the difficulties faced by the petitioner, the Debts Recovery Tribunal passed the second conditional order, dated 06.01.2023, directing the petitioner to pay a sum of Rs.18,00,000/- (Rupees Eighteen Lakhs only) on or before 06.02.2023 and another equal payment on or before

06.03.2023. That apart, without even complying with any one of the conditional orders, he filed W.P(MD) No.2492 of 2022 before this Court, which was also dismissed. Therefore, we find no reason to interfere with the impugned order, dated 17.10.2022 and accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

[T.R., A.C.J.] [R.S.M., J.]
26.04.2023

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

THE HON'BLE ACTING CHIEF JUSTICE
and
R.SUBRAMANIAN, J.

PKN

ORDER MADE IN
W.P.(MD)No.10237 of 2023

26.04.2023