BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Tuesday, the Eighth day of August Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice S.S.SUNDAR
AND
The Hon`ble Mr.Justice D.BHARATHA CHAKRAVARTHY

WMP(MD). No.14097 of 2023
in
WP(MD) No.13415 of 2023

Hayath Basha ... Petitioner/Petitioner

Vs

M/s. the Union Bank of India
Rep. by its Authorised Officer Salai Road
Ramanathapuram Branch,
Ramanathapuram. ... Respondent/Respondent

Prayer in WMP(MD). No.14097 of 2023:-

This Writ Miscellaneous Petition is filed under Article 226 of Constitution of India, to extend the time limit by 3 months to pay the remaining amount of the first installments fixed by this Honourable Court i.e., a sum of Rs.16,03,784/- vide order in W.P.(MD).No.13415 of 2023 dated 08.06.2023 and pass suitable order.

Prayer in WP(MD) No.13415 of 2023:-

Writ Petition is filed under Article 226 of the Constitution of India, praying this court to issue a Writ of Certiorarified mandamus to call for the records pertaining to the impugned order passed by the learned Chief Judicial Magistrate, Ramanathapuram in Cr.M.P.No. 1580 of 2023 dated 28.04.2023 and quash the same as illegal and consequently direct the respondent to consider the petitioners request for one time settlement in respect of the loan account No. 357006650069091 and to pass such further or other orders as this Honble Court may deem fit and proper in the circumstances of the case and thus render justice.

ORDER:-

This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.K.Navaneethraja, Advocate for the Petitioner and of Mr.S.Babu, Advocate for the respondent, this Court made the following order:

(Order of the Court was made by S.S.SUNDAR.,J)

Heard the learned counsel appearing on either side and perused the materials placed before this Court.

2.The above Writ Petition is filed seeking issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the learned Chief Judicial Magistrate, Ramanathapuram in Cr.M.P.No.1580 of 2023, dated 28.4.2023 and to quash the same as illegal and consequently to direct the respondent to consider the Petitioner's request for One Time Settlement in respect of the Loan Account No.357006650069091.

3.This Court, while entertaining the Writ Petition, passed an order in the following lines:

''7.Considering the fact that the loan itself is a housing loan and the secured asset is a residential house, we feel that the petitioner should be given an opportunity to discharge the debt and redeem the secured asset. Hence, this Writ Petition is disposed of with the following directions:

(i)The respondent Bank shall not take actual physical possession of the secured asset, if the petitioner pays a sum of Rs.26,03,784/- (Rupees twenty six lakhs three thousand seven hundred and eighty four only) to the respondent-Bank, or or before 0707.2023.

(ii)The balance amount of 60,00,000/-(Rupees sixty lakhs only) shall be paid by the Petitioner in six equated monthly installments comencing from August, 2023.The monthly installments shall be paid on or before 7th of evey succeeding month.

(iii)The interest payable for the interregnum period and other expenses shall be paid by the Petitioner along with the last instalment.

(iv)If there is any default in payment as directed above, the respondent-Bank can proceed further to take possession of the secured asset as well as for recovery of the amount due.''

4.It is admitted that the Petitioner was unable to pay the first instalment of Rs.26,03,784/- as directed by this Court, in the order dated 8.6.2023. However, it is admitted that a sum of Rs.10,00,000/- was paid on 5.7.2023. When the matter came up for hearing on 24.7.2023, the Petitioner was given time till 8.8.2023 to pay the balance amount of the first instalment of Rs.16,03,784/- to the respondent-Bank.This Court also directed to maintain status- quo prevailing as on date in the order, dated 24.7.2023.

5.The Petitioner has paid the balance amount of the first instalment. It is further stated that a sum of Rs.6 lakhs was also paid thereafter pursuant to the direction of this Court and it is in the said circumstance, the Petitioner seeks indulgence from the Court as well as from the respondent-Bank to reduce the penal interest and other concession that will be extended to any borrower upon payment of a substantial amount to reduce the liability, without affecting or eroding the security. As per the earlier order of this Court, dated 8.6.2023, the Petitioner has to pay the balance amount of Rs.60 lakhs in six equal monthly instalments commencing from August 2023. Now the petitioner request this Court to extend the time by three months. The respondent Bank has no serious objection for giving reasonable time. It is also directed that the Petitioner shall pay the monthly instalment on or before 7th of every succeeding English Calendar month.

6.It is in the said circumstance, this Court is inclined to pass the following order, in modification of the earlier order of this Court, dated 8.6.2023:

(1)the Petitioner shall pay the balance amount of Rs.54 lakhs or thereabouts which shall be determined mutually by the respondent-Bank and the Petitioner, after giving an opportunity to the Petitioner.

(2)the amount that is determined by the respondent-Bank, as due, as on date, shall be paid by the Petiitoner in six equal monthly instalments commencing from 7th of October 2023.

(3)the instalment shall be paid on or before 7th of every succeeding English Calendar month.

(4)the Petitioner is liable to pay the interest as applicable. It is open to the Petitioner to seek or avail any other concession or waiver at the time of determining the amount payable by the Petitioner in the loan account, as indicated in the order of this Court. The respondent shall not take physical possession of the secured asset, if the petiitoner pays the instalment as directed in this order.

(5)if the Petitioner commits default in payment of anyone of the instalment as directed above, it is open to the respondent Bank to take possession of the secured asset and any other action that is permisisble in law.

7.Since the Petitioner has defaulted in payment of the earlier instalment, the respondent-Bank had issued a sale notice fixing the sale on 10.8.2023.It goes without saying that the Petitioner has now complied with the first instalment and we have also rescheduled the instalment and as such, the sale shall not be proceeded with by the respondent.

8.With the above directions, the Miscellaneous Petition is disposed

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/08/2023

Sub Assistant Registrar(CS)

vsn

TO

1.The Chief Judicial Magistrate, Ramanathapuram

2.The Authorised Officer,
The Union Bank of India
Salai Road,
Ramanathapuram Branch,
Ramanathapuram.

ORDER DATED : 08/08/2023

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ORDER

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WMP(MD). No.14097 of 2023

in

WP(MD) No.13415 of 2023

DL(23.08.2023) 7P/3C