



W.P(MD)No.26504 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 29.08.2023

CORAM :

**THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE C.KUMARAPPAN**

W.P(MD)No.26504 of 2022
and
W.M.P(MD)Nos.20674 of 2022
and
W.M.P(MD)No.12828 of 2023

M/s.R.K.S.Modern Rice Mill,
Through its Managing Partner,
Shahul Hameed

... Petitioner

Vs.

1.State Bank of India,
A Banking Institution,
Constituted under the State Bank of India Act, 1955,
Having its Head Office at Mumbai,
And having its Branches,
in Several Places and it is represented by its,
Chief Manager, Stressed Assets Recovery Branch,
Madurai.

2.A.Pandikannan, Advocate
Advocate Commissioner.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned notice issued by the second respondent / Advocate



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Commissioner through his letter dated 11.11.2022 relating to the order passed in Cr.M.P.No.7/2022 on the file of the Chief Judicial Magistrate, Sivagangai and quash the same as illegal and consequently, direct the first respondent bank to extent the One Time Settlement Scheme in respect of petitioner's dues with respect to Loan Account No.34233841708 and A/c.37314070989.

For Petitioner : Mr.S.Arivalagan
For R-1 : Mr.P.Pethu Rajesh,
Standing Counsel

ORDER

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

We have heard Mr.S.Arivalagan, learned counsel for the petitioner and Mr.P.Pethu Rajesh, learned Standing Counsel for the first respondent / Bank.

2. The petitioner is challenging the notice issued by the Advocate Commissioner, dated 11.11.2022, for taking over possession purportedly pursuant to the orders under Section 14 of the SARFAESI Act, 2002.

3. The learned counsel for the petitioner submits that earlier One Time Settlement was arrived at to the tune of Rs.2 Crores 78 Lakhs and odd.



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The petitioner could not pay the amount within time. As per the order of this Court, dated 08.06.2022, the petitioner was directed to deposit 20% of the said amount. The amount was to be deposited within four weeks. The petitioner could not deposit the said amount. However, subsequently, deposited the 20% of the amount. According to the learned counsel for the petitioner, subsequent to the dismissal of the writ petition, the petitioner filed a review application and the same is pending.

4. The learned counsel for the bank submits that as on date, more than Rs.5, 28,00,000/- is outstanding against the petitioner.

5. It would appear that the petitioner earlier filed a writ petition W.P(MD)No.10970 of 2022. A Coordinate Bench of this Court passed an order on 08.06.2022, directing the petitioner to deposit 20% of the One Time Settlement amount within four weeks. The petitioner failed to deposit the said amount. The Division Bench in its order, dated 29.07.2022, dismissed the writ petition holding that the petitioner lacks *bonafides*. Paragraph No.4 of the said order reads thus:

“4.This Court is unable to find any bona fide. The respondent bank being a public sector bank has to survive



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*to serve public. The writ petition challenging the order of the learned Chief Judicial Magistrate, Sivagangai, is entertained in view of the fact that the Presiding Officer of the Madurai Debt Recovery Tribunal is yet to take charge. In this case, when we examine *bona fide*, the petitioner has not raised any ground pointing out any irregularity in the order of the learned Chief Judicial Magistrate, Sivagangai. The bank gave one more opportunity for one time settlement. However, that was not utilized by the petitioner. This Court granted sufficient time to pay just 20% of the amount, which was arrived at for settling the entire dues by the bank, with the hope that this Court may pursue the bank to consider the one time settlement proposal with the modification. However, the petitioner has missed a golden opportunity. This would only show the lack of *bona fide* in this writ petition”*

6. In the said writ petition, the petitioner had challenged the order passed under Section 14 of the SARFAESI Act, 2002.

7. In light of that, it would not be appropriate now to entertain the writ petition.



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8. The learned counsel for the petitioner submits that the petitioner has deposited Rs.15,00,000/- on or before 29.11.2022 as directed by this Court under order, dated 23.11.2022.

9. Earlier itself, this Court had recorded that the petitioner lacks *bonafides*. The petitioner is delaying the payment. As far as the One Time Settlement is concerned, it is between the bank and the borrower. That would be a separate contractual matter.

10. We asked the learned counsel for the petitioner whether the petitioner would deposit Rs.1 Crore within four weeks. The learned counsel for the petitioner is not answering in the affirmative. As the petitioner is not ready to show his *bonafides*, we are not inclined to entertain this writ petition. In case the petitioner has any other remedy available, it is for the petitioner to avail the same. As such, the writ petition is disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

(S.V.G., CJ.)

(C.K., J.)

29.08.2023

NCC : Yes/No
Index : Yes/No
PM



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The Chief Judicial Magistrate,
Sivagangai.



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THE HON'BLE CHIEF JUSTICE
and
C.KUMARAPPAN, J.

PM

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