

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R. HEMALATHA

W.P.No.1867 of 2020
WMP.Nos.2183 & 2186/2020

N.Gunasekar

...Petitioner

Versus

1. The Authorized Officer,
Central Bank of India,
Third Floor, 14/15,
Variety Hall Road,
Coimbatore 641 001.

2. The Authorized Officer,
Central Bank Of India,
No.248, Arjunaa Towers,
Cherry Road,
Salem 636 001.

3.Mr.Sivakumar

4.Mr.Manivel

5.Mr.Ashok Kumar

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the e-auction sale notice of the 1st respondent dated 18.11.2019 and the consequential auction sale held on 23.12.2019 and quash the same and consequently direct the respondents 1 and 2 to accept the balance OTS amount of Rs.43,14,505/- (Rupees Forty Three Lakhs Fourteen Thousand and Five Hundred and Five Only) under the Special OTS Scheme and close the loan account of the petitioner.

For Petitioners: Mr.Aiyar and Dolia

For Respondents: Mr.M.L.Ganesh for Central Bank
of India for R1 and R2

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

By consent, the Writ Petition is taken up for final disposal. Mr.M.L.Ganesh, learned standing counsel for Central Bank of India accepts notice on behalf of the respondents 1 and 2.

2. Mr.Aiyar and Dolia, learned counsel appearing for the petitioner has drawn the attention of this Court to the materials placed and would submit that petitioner is the Proprietor of M/s.Cholan Builders, engaged in the business of promotion and development of land and other allied activities and for business purpose, he availed financial assistance / loan facilities from the 2nd respondent / the Central Bank of India, Cherry Road, Salem, who, after scrutiny of the documents had granted credit facilities to the tune of Rs.1 Crore and the petitioner for the purpose of securing the loan, offered his immovable property, measuring an extent of 39 cents situate in S.No.28, Sub Division S.No.28/4, Re-Survey T.S.No.6/5 and 6/6 at Reddiyur village, Ward C, Block 4, Salem Taluk, Salem District.

3. It is the further submission of the learned counsel appearing for the petitioner that on account of vagaries of weather, the business of the petitioner run into some difficulty and on account of non-adherence to the time schedule, the respondent Bank has initiated proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by issuing notice under Section 13 (2) of the said Act dated 26.05.2015 demanding a sum of Rs.1,06,06,168/- as on 25.05.2015 within a period of 60 days from the date of receipt of the said notice and the petitioner, on receipt of the said notice, had approached the respondents 1 and 2 and prays for some time to settle dues.

4. The learned counsel appearing for the petitioner would further submit that the 1st respondent has issued a Sale Notice dated 08.10.2015 fixing the date of auction on 16.11.2015 and when it was subjected to challenge in S.A.No.417 of 2015 on the file of Debts Recovery Tribunal, Madurai, an order of interim stay was passed and the petitioner has complied with the portion of the order and due to financial difficulties, he could not comply with the order and therefore, the said Appeal was dismissed as infructuous on account of non-compliance of the order.

5. The learned counsel appearing for the petitioner has drawn the attention of this Court to the NDND Special OTS Scheme (Credit Monitoring and Policy Department) of the respondent Bank

in Instruction Circular No. 2170 dated 03.10.2019 and would submit that the petitioner is coming under the said scheme and he has also intended to avail the scheme and a communication in this regard was also sent to the respondent Bank and however, the said request of the petitioner dated 19.12.2019 was rejected by the respondent Bank, vide communication dated 20.12.2019 by stating that the petitioner is requested for settlement of loan for Rs.37 lakhs only and intended to make a balance payment within 120 days and however as per the said scheme, the entire OTS amount of Rs.47,14,505/- has to be paid on or before 31.03.2020 and since the time limit sought for by the petitioner exceeds the said period, his request cannot be considered and it was followed by the second auction sale notice dated 18.11.2019 and making challenge to the said notice, present Writ Petition is filed.

6. The learned counsel appearing for the petitioner has produced seven Pay orders, as mentioned in detail extracted below, for a sum of Rs.40,00,0000/- and undertakes to pay the balance amount of Rs.3,14,505/-:

S.No	Name of Bank	Date	D.D.Number	Amount
1.	ICICI Bank	21.12.2019	508748	Rs.5,00,000/-
2.	Indian Bank	23.12.2019	350811	Rs.5,00,000/-
3.	HDFC Bank	04.01.2020	001072	Rs.5,00,000/-
4.	ICICI Bank	13.01.2020	508864	Rs.5,00,000/-
5.	Axis Bank	14.01.2020	017068	Rs.10,00,000/-
6.	Central Bank of India	14.01.2020	080977	Rs.5,00,000/-
7.	State Bank of India	16.01.2020	220985	Rs.5,00,000/-

The learned counsel appearing for the petitioner would submit that apart from Pay Orders, he has also remitted a sum of Rs.4,00,000/- and the same is not in dispute and he has to pay the balance amount of Rs.3,14,505/- and it may be paid within seven days from the date of receipt of copy of this order.

7. Heard the submission of Mr.M.L.Ganesh, learned standing counsel appearing for respondent Bank and he would submit that since the petitioner did not adhere to the time line as stipulated under the said scheme, his request was rejected and in the light of the bonafide shown by the petitioner, this Court

may pass appropriate orders and the respondent Bank is also willing to accept the said Demand Drafts, subject to the condition that the balance amount, as promised, shall be paid within a stipulated time fixed by this Court.

8. This Court has considered the rival submissions and also perused the materials placed before it.

9. The petitioner has drawn seven Pay Orders (above cited) for a sum of Rs.40,00,000/- in favour of Central Bank of India and balance amount, due and payable is Rs.3,14,505/- and in the light of the fact that the learned counsel appearing for the petitioner, on instructions, undertakes to settle the balance amount of Rs.3,14,505/- within a period of seven days from the date of receipt of a copy of this order, this Writ Petition is disposed of, by permitting the Bank to realise the Pay Orders. No costs. Consequently connected miscellaneous petitions are closed.

s/d-

Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

To

1. The Authorized Officer,
Central Bank of India,
Third Floor, 14/15,
Variety Hall Road,
Coimbatore 641 001.
2. The Authorized Officer,
Central Bank Of India,
No.248, Arjunaa Towers,
Cherry Road,
Salem 636 001.

+1 CC to M/s. Aiyar and Dolia, Advocate sr 6635.

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W.P.No.1867 of 2020

CNR(CO)
SP(04/02/2020)