IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE N. SENTHILKUMAR

W.P.No.14013 of 2024
and
W.M.P.No.15202 of 2024

M.Sangeetha Raji ... Petitioner

Vs.

1.The Regional Director,
Reserve Bank of India,
Fort Glasis,
No.16, Rajaji Salai,
Chennai – 600 001.

2.The District Collector/District Magistrate,
Collectorate,
Cuddalore District.

3.The Branch Manager/The Authorised Officer,
IDBI Bank, Cuddalore Branch,
No.14-B, Bethal Towers,
Pondy Main Road, Alpet,
Manjakuppam,
Chennai – 607 001.

4.Kalaivanan ... Respondents

[R4 impleaded as per order dated 12.06.2024 in WMP No.16836 of 2024 in W.P.No.14013 of 2024]

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to direct the respondents to provide a chance to the petitioner to avail the benefits of OTS (One Time Settlement) on the basis of Sanction Letter dated 17.10.2022 given by the 3rd respondent Bank under AMBY Scheme by considering the petitioner's representation dated 16.05.2024 within stipulated time fixed by this Court and consequently, to direct the 3rd respondent to defer the sale proceedings initiated in pursuance of Sale Notice dated 17.04.2024 by fixing sale on 03.05.2024 published in Daily Newspaper namely “Indian Express” issued by the 3rd respondent Bank.

For Petitioner	:	Mr.P.M.Vishnuvarthanan
For R1	:	Mr.C.Mohan for M/s.King and Partridge for RBI
For R2	:	Mr.M.R.Gokul Krishnan Additional Government Pleader
For R3	:	Mr.E.Vijayaraghavan
For R4	:	Mr.K.Balaramesh

ORDER

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

This writ petition is filed for issuance of a Writ of Mandamus directing the respondents to give a chance or opportunity to the petitioner to avail the benefit of One Time Settlement (OTS) on the basis of sanction letter dated 17.10.2022 given by 3rd respondent Bank under AMBY Scheme, by considering the representation of the petitioner dated 16.05.2024 within the time stipulated by this Court and to direct the 3rd respondent Bank to defer the sale proceedings initiated pursuant to the sale notice dated 17.04.2024 fixing the sale on 03.05.2024.

2.The petitioner's father Mr.C.Thangasamy availed credit facilities from the respondent Bank and it is admitted that the total amount borrowed by the petitioner's father is around Rs.90,00,000/-. The petitioner's father and mother by name Mrs.T.Rajeswari deposited the title deeds pertaining to the immovable properties which are now the subject matter of sale. The loan account of the petitioner's father was declared NPA even in 2010 and the 3rd respondent issued a demand notice under Section 13(2) of the

SARFAESI Act on 15.02.2011. Thereafter, possession notice under Section 13(4) was also issued on 27.05.2011. The respondent Bank filed a petition under Section 14 of the SARFAESI Act and the District Collector has already passed an order for taking possession on 28.02.2014. It is stated that physical possession was taken on 30.07.2014. It appears that the respondent Bank has issued sale notices from November, 2014, after giving ample opportunity to the petitioner's father to settle the dues.

3.It is admitted that petitioner's mother Mrs.T.Rajeswari died on 27.12.2021. Unfortunately, the petitioner's father, who was a party to the proceedings, and petitioner's brother who also stood as guarantor did not inform the Bank about the death of petitioner's mother, even though a few applications were pending before the Debt Recovery Tribunal challenging the previous sale notices. On 24.02.2022, the second sale notice was issued including the property of petitioner's mother who is dead. Even though the sale proceedings are against one of the properties of the deceased, the said sale notice was challenged by petitioner's father Mr.C.Thangasamy without disclosing the death of his wife Mrs.T.Rajeswari. Again, the property was brought for sale on 17.04.2024, after the dismissal of SARFAESI Appeal in T.S.A.No.209 of 2023 filed by the petitioner's father, which was dismissed as infructuous.

4.It is now admitted before this Court that the 4th respondent participated in the public auction and was declared as successful bidder and all the four items of properties comprised in different Survey Numbers were sold for a sum of Rs.1,43,25,000/-. Even though there is a dispute with regard to the amount that was offered by the 4th respondent and the actual amount paid by the 4th respondent, this Court, having regard to the issues raised before this Court, is not inclined to elaborate further. It is admitted that the petitioner's father, in all the proceedings, never brought to the notice of the Bank about the death of his wife and guarantor the deceased Mrs.T.Rajeswari, despite the fact that she is the co-mortgager and owner of one of the items of the properties.

5.The specific stand taken by the petitioner is that the Bank as well the auction purchaser have colluded to mention the sum of Rs.1,43,25,000/- just to save the sale, because the sale cannot be confirmed by the Bank unless the Authorised Officer gets a price higher than the reserve price. It is admitted that the reserve price fixed was Rs.1,43,00,000/-. Learned counsel appearing for the petitioner pointed out serious irregularities in the sale of immovable secured assets. Referring to the notice that was published, the learned counsel for the petitioner pointed out that the sale was by showing the name of her mother who died on 2021. The petitioner produced the publication, in the newspaper in Cuddalore Edition, with the photograph of her deceased mother on her second year death Anniversary. Admittedly, petitioner was not informed about the sale.

6.In terms of Sub-Rules (2) and (2A) of Rule 8 of the Security Interest (Enforcement) Rules, 2002, notices under these Rules should be served on the borrower through electronic mode of service, in addition to the modes prescribed under Sub-Rules (1) and (2) of Rule 8. Under Sub-Rule (2) of Rule 8, the possession notice as referred to in Sub-Rule (1) shall also be published in two leading newspapers, one in vernacular language having sufficient circulation in that locality, by the Authorized Officer. The Bank has not produced before this Court the materials to show that the procedure contemplated under Rule 8, is followed. When the mortgagor is no more, the legal heirs of borrower should be put on notice.

7.Under Sub-Rule (5) of Rule 8, the Authorized Officer is required to obtain valuation of the property from an approved Valuer, and in consultation with the Secured Creditor, fix the reserve price of the property, and thereafter, the property can be sold by obtaining quotations or inviting tenders, etc. In this case, absolutely, there is no document to show that the Authorized Officer has obtained valuation of property from an approved Valuer. It is brought to our notice that there was no independent valuation after the previous sale. It is also brought to the notice of this Court that, pursuant to the notification issued by the Government of Tamil Nadu, the Guideline Value has been revised in 2024 much before the sale. It is stated that even the revised Guideline Value was not taken note of by the Authorized Officer. The learned counsel for the petitioner states that the value of four items brought to sale will not be less than Rs.5 Crores, even though the Guideline Value is still lower.

8.It is to be noted that, in the public notice, not even the time for auction is specified. The fact that the petitioner's mother died in 2021, is not disputed. The petitioner, as a legal heir of the borrower, who has succeeded to the property, has a right to redeem the property (equity of redemption). To this extent, the sale without notice to the petitioner as required under Rule 8(6) of Security Interest (Enforcement) Rules, 2002, insofar as the property of the petitioner's mother, is illegal. The right to redeem the property is an absolute right and notice cannot be dispensed with to any owner of the mortgaged property. In view of the serious irregularities, this Court is of the view that the Bank has failed to protect not only the interest of the borrower, but also the interest of Bank, by selling the entire properties mortgaged for a low price. It is now admitted that the Bank has no other asset to proceed against except the properties that are now brought to sale under notice dated 17.04.2024. It is not in dispute that there was no bidder except the 4th respondent who participated at the time of auction. Since all these irregularities are evident from the records, there is no scope for getting proper price for the mortgaged properties. The Bank officials have conducted the sale in an irresponsible way, probably due to collusion or for other reasons. The Authorized Officer of the Bank has confirmed the sale with serious irregularities unmindful of the irreparable loss that is caused to the Bank itself. Therefore, this Court is of the view that the sale is to be set aside.

9.However, serious objection is raised by the learned counsel appearing for the 4th respondent/auction purchaser saying that, in a writ petition filed by the petitioner for OTS, the Court cannot pass orders setting aside the sale. However, this Court, having regard to the peculiar facts and circumstances as borne out from records, is inclined to set aside the sale, not only for the serious irregularities pointed, but also for the reason that the element of collusion cannot be ruled out from the facts and materials placed before this Court. As stated earlier, the sale in respect of the properties of petitioner's mother is void. In view of serious irregularities, we hold that the sale in favour of 4th respondent is illegal and hence, we are inclined to mould the relief as this course will also be in the interest of public financial institution. We take note of the submission of counsel appearing for the Bank that the liability as on date is more than Rs.9 Crores and that the Bank has no other security.

10.Consequent to the setting aside of sale in favour of the 4th respondent, the Sale Certificate issued and its registration will go. The respondent Bank is directed to refund the amount deposited by the 4th respondent, along with incidental expenses towards registration of Sale Certificate, within a period of two weeks from the date of receipt of a copy of this order. The 4th respondent is directed to hand over possession of the property to the respondent Bank, forthwith.

11.As regards the prayer in this writ petition regarding OTS, learned counsel appearing for the RBI as well the learned counsel for the 4th respondent state that no mandamus can be issued against the Bank as regards OTS. This Court has already expressed its view in few cases that, if a borrower approaches the Bank for OTS, it is the duty of the Bank to consider the same and it is open to the Bank to ultimately reject the proposal if it is not agreeable to them for valid reasons. However, it cannot be said that the request for OTS will not be considered by the respondent Bank. It is true that mandamus cannot be issued by Court regarding OTS, however, under the Doctrine of Lender's Liability, coupled with the peculiar situation, the Bank can consider any proposal considering the market value of Secured Assets. The guidelines of Reserve Bank of India regarding OTS is drafted in public interest and therefore, subject to the discretion of Bank, the right of borrower is limited to the extent of considering the request in the light of RBI guidelines or the norms of the Bank. However, this cannot be understood that this Court has directed the respondent Bank to accept the OTS. However, if the petitioner or any other borrower comes forward with a fair proposal, the same can be considered by the respondent Bank within a period of two weeks from the date of receipt of such proposal, which shall be submitted by the petitioner within one week from the date of receipt of a copy of this order. It is open to the respondent Bank to proceed further if the proposal is not acceptable to the Bank for reasons. Depends upon the decision taken on the OTS proposal to be submitted by the petitioner, within a period of two weeks from the date of receipt of such proposal from the petitioner, the respondent Bank is directed to get fresh valuation for the entire properties from an approved Valuer and the Guideline Value as per the Register maintained in the Registrar's Office. The respondent Bank, after meticulously and scrupulously following the procedure required under Rule 8 and Rule 9 of Security Interest (Enforcement) Rules, 2002, to serve their own interest, shall advertise the sale without any further delay.

12.This writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R., J.)   (N.S., J.)
24.07.2024

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Internet : Yes
Index : Yes / No
Neutral Citation : Yes / No

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