BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.4244 of 2023

V.Murugesan ... Petitioner

-vs-

The Branch Manager,
State Bank of India,
Keelakkarai Branch,
Keelakkarai,
Ramanathapuram District. ...Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, to direct the respondent to return the original documents of the petitioner by clearing the mortgage after appropriating the sum of Rs.223.82/- (Rupees Two Hundred and Twenty Three rupees Eighty Two paisa only) with subsequent interest till date, to issue a no due certificate to the petitioner by discharging the mortgage, activate the accounts of the petitioner and his daughter within the time stipulated by this Court.

For Petitioner : Mr.D.Boopal

For Respondent : Mr.N.Dilip Kumar

ORDER

[Order of the Court was made by R.SUBRAMANIAN, J.]

The prayer in the writ petition is as follows:

> "To *issue a Writ of Mandamus, to direct the respondent to return the original documents of the petitioner by clearing the mortgage after appropriating the sum of Rs.223.82/- (Rupees Two Hundred and Twenty Three rupees Eighty Two paisa only) with subsequent interest till date, to issue a no due certificate to the petitioner by discharging the mortgage, activate the accounts of the petitioner and his daughter within the time stipulated by this Court."*

2. The Bank after classifying the account of the petitioner as a non-performing asset issued a notice under Section 13(2) of the Securtisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, on 13.12.2022, demanding payment of a sum of Rs.10,96,195/-. (Rupees Ten Lakhs Ninety Six Thousand One Hundred and Ninety Five only). Within the time permitted under Section 13(2) the borrower paid almost the entire amount leaving a debit balance of Rs.223.82/- (Rupees Two Hundred and Twenty Three rupees Eighty Two paise only) alone. Since the Bank did not return the original documents, despite payment, the borrower has approached this Court with a prayer for Mandamus as above.

3. We have heard Mr.D.Boopal, learned counsel appearing for the petitioner and Mr.N.Dilip Kumar, learned counsel appearing for the bank.

4. Mr.N.Dilip Kumar would submit that the debit balance in the account as on 23.02.2023 is Rs.81,698/-(Rupees Eighty One Thousand Six Hundred and Ninety Eight only). The statement of account that has been filed along with the Writ Petition is not being disputed. It shows the debit balance as on 03.01.2023 is Rs.223.82/-(Rupees Two Hundred and Twenty Three rupees Eighty Two paisa only). While not disputing the correctness of the statement, Mr.Dilip Kumar would submit that the sum of Rs.81,000 and odd includes certain expenses incurred by the bank in making payment to the recovery agents.

5. We are afraid, we cannot countenance the said submission. The Bank has taken only the first step towards recovery, that is, issuing a notice under Section 13(2), within the time allowed under the provision, the debtor has paid the entire money leaving a very meagre balance of Rs. 223.82/-(Rupees Two Hundred and Twenty Three rupees Eighty Two paisa only). There was no occasion for the bank to incur any other expenditure at that stage. Therefore, the expenditure said to have been incurred by the bank, which in our opinion is unauthorized, cannot be passed on to the borrower. The provisions of the Securtisation and Reconstruction of

Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, does not contemplate incurring of any expenditure prior to issuance of notice under Section 13(2) or atleast for a period of 60 days therefrom. Only if the debt is not repaid within 60 days from the date of receipt of the 13(2) notice, the bank can proceed under Section 14 for which the bank has to essentially incur certain expenditure. In the case on hand, we find that the entire amount due, leaving a very meagre amount of Rs.223.82/- (Rupees Two Hundred and Twenty Three rupees Eighty Two paisa only) has been paid even before 03.01.2023. Hence, the claim of the bank that it had incurred certain expenditure towards payment to the recovery agents cannot be sustained.

6. The Writ Petition is therefore allowed. The Bank will return the original documents on receipt of the sum of Rs.223.82/- (Rupees Two Hundred and Twenty Three rupees Eighty Two paisa only) with accrued interest on the said sum from 03.01.2023 till the date of payment. The Bank will inform the petitioner as to the exact amount due as indicated above with in two weeks from the date of receipt of the copy of the order and the petitioner will pay the same within a period of four (4) weeks therefrom. On payment of the amount by the petitioner, the original title deeds shall be returned to the petitioner. No costs.

[R.S.M., J.] **[L.V.G., J.]**

28.08.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes
Sml / Mrn

R.SUBRAMANIAN, J.
and
L.VICTORIA GOWRI, J.

Sml / Mrn

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