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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.06.2024

CORAM

THE HON'BLE MR.JUSTICE **R.SURESH KUMAR**
AND
THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

W.P(MD)No.12185 of 2024

Selvam ... Petitioner

vs

1.The Registrar,
Debts Recovery Tribunal, Madurai.

2.The Authorised Officer,
ICICI Home Finance Company Limited,
No.38/1, II Floor,
Sri Lakshmi Nivas,
Krishnarao Tank Road, Madurai – 625 001. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to grant extension of time for comply the conditional order, dated 02.04.2024 the order in I.A.No.1310 of 2024 and I.A.No.311 of 2024, dated 19.01.2024 in S.A.No.35 of 2024 on the file of the Debts Recovery Tribunal, Madurai, in accordance with law.

For Petitioner : Mr.R.Alagumani
For R2 : Mr.R.Senthil Kumar

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ORDER

(Order of this Court was made by **G.ARUL MURUGAN, J.**)

The Writ Petition is filed seeking for extension of time to comply with the conditional order, dated 02.04.2024 passed in I.A.No.1310 of 2024 and I.A.No.311 of 2024, dated 19.01.2024 in S.A.No.35 of 2024 on the file of the Debts Recovery Tribunal, Madurai.

2.The petitioner had availed two separate loans, one in respect of developing his business and another one is housing loan in the year 2019. Admittedly, since there was default in repayment of the dues, the accounts were classified as non-performing assets and the respondent Bank has initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act") and a demand notice under Section 13(2) of SARFAESI Act was issued on 27.04.2022 for an outstanding sum of Rs.72,44,477/- and Rs.28,73,357/- respectively for the two accounts. It is followed by issuance of possession notice, dated 11.10.2022 under Section 13(4) of the SARFAESI Act. After taking symbolic possession of the property, the respondent Bank had also issued

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sale notice, dated 19.12.2023 fixing the sale on 25.01.2024. The petitioner had challenged the sale notice before the Debts Recovery Tribunal, Madurai, in S.A.No.35 of 2024 and the Tribunal had passed a conditional order of stay on 19.01.2024 in I.A.No.311 of 2024. The Tribunal had directed the petitioner to pay 50% of the dues in four equal monthly instalments commencing from 19.02.2024 till 20.05.2024.

3.The petitioner had paid the first installment of Rs.12,65,000/- on 17.02.2024 and as the second installment was not paid, he has filed a petition in I.A.No.1310 of 2024 seeking to extend the time for making the second installment. The Tribunal by order, dated 02.04.2024 extended the time and directed the petitioner to pay the second installment on or before 18.04.2024 and for filing proof of payment, the case was adjourned to 21.05.2024. As the petitioner was not able to comply with the same, he decided to sell the property to a third party and submitted a representation on 16.05.2024 to the respondent Bank seeking three months time to settle the outstanding and thereafter, have filed the above Writ Petition seeking for extension of time.

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4.Heard the learned Counsel for the petitioner and perused the materials available on record.

5.Admittedly, the petitioner had availed two loan accounts, one for his business and another one for housing and since there was default in repayment of the loan accounts, proceedings under the SARFAESI Act were initiated and a demand notice under Section 13(2) and possession notice under Section 13(4) of SARFAESI Act were issued. The petitioner had not challenged the same and after the sale notice was issued on 19.12.2023 fixing the sale on 25.01.2024, the petitioner had approached the Debts Recovery Tribunal, Madurai, challenging the sale notice.

6.The Tribunal had entertained the SARFAESI Appeal and had passed an conditional order of stay on 19.01.2024. The relevant portion of the order is extracted hereunder for ease reference:

> *"Without going into merits, considering the submissions of both sides' Counsels, Ad-Interim stay is granted. However, The Respondent bank is at liberty to proceed with the sale but not to confirm the sale till 21.05.2024 pursuant to the sale notice dated 19.12.2023, with respect to the petition schedule mentioned property, against the Respondent Bank, if the sale is so held, subject to payment of 50% of the suit amount (ie., Rs.1,01,17,834/-) in 4 equal installments directly to the Respondent Bank as mentioned here under:*

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Installment	Date (on or before)	Amount
1st Installment	19.02.2024	Rs.12,65,000/-
2nd Installment	19.03.2024	Rs.12,65,000/-
3rd Installment	19.04.2024	Rs.12,65,000/-
4th Installment	20.05.2024	Rs.12,65,000/-

However, in the event of failure to pay any one of the installments as ordered above, the Respondent Bank is at liberty to proceed further and the Stay shall stand vacated automatically. If the petitioner complies with the order, the stay granted shall be made absolute, pending disposal of the SA. Accordingly, Petition in IA.No. 311.24 (Stay) is disposed with aforesaid directions."

7.The petitioner had paid the first installment of a sum of Rs.12,65,000/- on 17.02.2024, but did not make the payment of the second installment, but however, had filed an application in I.A.No.1310 of 2024 seeking for extension of time to pay the second installment. The Tribunal by order, dated 02.04.2024 had, in fact, granted extension of time, as prayed for by the petitioner and the petitioner was directed to pay the second installment on or before 18.04.2024 and the case was posted for filing proof on 21.05.2024.

8.It is the contention of the learned Counsel for the petitioner that the petitioner was not able to moblize the amount and they decided to sell the property and settle the entire loan dues to the respondent Bank within a

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period of two months and in such regard, they had also sent a representation on 16.05.2024 and under such circumstances, unless the extension of time is granted, the petitioner will not be in a position to comply with the payment.

9.We are not able to appreciate the arguments advanced by the learned Counsel for the petitioner seeking for extension of time before this Court for the simple reason that when already the petitioner had approached the Debts Recovery Tribunal, Madurai, by filing a SARFAESI Appeal and the same was also entertained and the Tribunal has also passed a conditional order of interim stay of the sale notice and in fact, even when there was a default in the second installment, the application filed by the petitioner seeking extension of time was also entertained by the Tribunal and by order, dated 02.04.2024, the time for making second installment had already been extended till 18.04.2024.

10.If at all the petitioner was having any further grievance or required any further time, it would only be appropriate for the petitioner to approach the Tribunal, where, the SARFAESI Appeal is pending. Without resorting to the same, filing of the Writ Petition seeking for further extension of time

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granted by the Tribunal, in our considered view cannot be appreciated and entertained. In such view of the matter, we see no merits in the above Writ Petition and it is deserved to be dismissed and accordingly, dismissed. No costs.

[R.S.K., J] & [G.A.M., J]
11.06.2024

Internet :Yes/No
Index :Yes/No
NCC :Yes/No

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To

The Registrar,
Debts Recovery Tribunal, Madurai.

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R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

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Order made in
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