BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2024

CORAM

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

W.P(MD)No.14694 of 2024
and
W.M.P.(MD)No.12884 of 2024

P.Saravana Kumar ... Petitioner

vs

The Chief Manager,
City Union Bank Limited,
Tuticorin Branch,
103, A/S-6, V.E. Road,
Tuticorin – 628 003. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents to consider the petitioner's representation, dated 14.06.2024 for one time settlement of Rs. 19,00,000/- and close the loan account of the petitioner's late father P.Ponraj.

For Petitioner :Mr.R.Maheswaran
For Respondent :Mr.V.Sukumar
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ORDER

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

Heard Mr.R.Maheswaran, learned Counsel appearing for the petitioner and Mr.V.Sukumar, learned Counsel, who takes notice on behalf of the respondent.

2.The petitioner has preferred the above Writ Petition seeking to direct the respondent Bank to consider his representation, dated 14.06.2024 seeking one time settlement of a sum of Rs.19,00,000/-.

3.The learned Counsel appearing for the petitioner submitted that even though there has been some defaults committed by the petitioner in repayment of the dues to the respondent Bank, now the petitioner is willing to settle the entire dues to the respondent Bank, if his proposal towards one time settlement is considered and in such regard, he submitted a representation to the respondent Bank on 14.06.2024, which has not been considered. The learned Counsel further submitted that when the representation of the petitioner seeking for one time settlement is pending, in the meanwhile, if the respondent Bank proceeds to take any coercive steps in respect of the property, which is a residential house, the entire family of the petitioner will be on street. Therefore, the interest of the petitioner has to be protected. The learned Counsel further submitted that the petitioner had made an one time settlement proposal of a sum of Rs.19,00,000/- and to show his *bona fide*, he is ready to pay immediately a sum of Rs.5,00,000/- and also he will be able to settle the balance of Rs.14,00,000/- within two weeks and sought for indulgence of this Court.

4.Mr.V.Sukumar, learned Counsel appearing for the respondent submitted that as on date, a sum of Rs.70,00,000/- is due and payable by the petitioner to the Bank and as the respondent is proceeding to take possession pursuant to the order passed by the learned Chief Judicial Magistrate under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act"), the petitioner has approached this Court by suppressing the actual facts, just to protract the proceedings. The learned Counsel further contended that if at all the petitioner wants to make any settlement proposal, it has to be based on the actual dues pending and not simply an offer, which is not based on the actual dues pending and therefore, he sought for dismissal of the Writ Petition.

5.We gave our anxious consideration and perused the materials available on record.

6.Admittedly, the petitioner had availed financial assistance from the respondent bank as early as on 29.04.2016 by executing equitable mortgage by depositing the title deeds of the property. As there was default in repayment of the dues to the respondent Bank, the loan account was classified as non-performing asset on 25.09.2018 and the respondent Bank had initiated proceedings under the SARFAESI Act.

7.The respondent Bank had also issued a demand notice under Section 13(2) of SARFAESI Act on 23.10.2018 and as the payments were not made within the period of sixty days, further possession notice under Section 13(4) of the SARFAESI Act was issued on 28.12.2018. As per the averments made in the affidavit, it has to be noted that the Bank had also filed a petition under Section 14 of the SARFAESI Act before the learned

Chief Judicial Magistrate for taking physical possession of the property and the respondent Bank is proposed to take actual possession of the property on 06.07.2024. Only at this juncture, the petitioner had sent a representation on 14.06.2024 seeking for an one time settlement for a sum of Rs.19,00,000/- and had moved the Writ Petition. The learned Counsel for the respondent Bank disputes the due amount and according to the respondent Bank, a sum of Rs.70,00,000/- is due as on date.

8.Be that as it may, if at all the petitioner wants to settle the dues of the respondent Bank through an one time settlement, it is for the petitioner to submit necessary proposal to the respondent Bank and it is for the respondent Bank to consider the same. As far as the settlement of the loan under the one time settlement is concerned, this Court in a Writ Petition by exercising the extraordinary jurisdiction under Article 226 of Constitution of India cannot direct the respondent Bank to consider the settlement proposal, as it is a commercial transaction entered into between the Bank and the borrower based on an agreement. More over, the petitioner has not raised any irregularities in the proceeding initiated by the respondent Bank in respect of which also, his remedy is before the appropriate forum and therefore, we are not in a position to issue any direction to the respondent Bank in respect of deciding of the one time settlement proposal, as it is within the domain of the respondent Bank.

9.In such circumstances, this Writ Petition fails and it is, accordingly, dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J] & [G.A.M., J]
04.07.2024

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

cmr

R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

cmr

Order made in
W.P(MD)No.14694 of 2024

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