BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 27.01.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.13777 of 2024
and
W.M.P.(MD)Nos.12118 and 12120 of 2024

Velvizhi ... Petitioner

Vs.

1.The Regional Manager/Authorized Officer,
Indian Overseas Bank,
8/2 8/3 Chithambara Nagar First Street,
Thoothukudi.

2.The Branch Manager,
Indian Overseas Bank,
Pennington Market,
Rajaji road,
Srivilliputhur,
Virudhunagar District. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Auction Sale notice published in the Dinamalar New paper dated 15.06.2024 and quash the same as illegal and ultra vires consequently direct 2nd respondent to allow the petitioner to redeem all the jewel loan.

For Petitioner : Mr.A.Joseph Jerry
For Respondents : Mr.N.Dilipkumar
Standing Counsel

ORDER

This Writ Petition is filed, to quash the invoked auction sale notice published in Dinamalar newspaper dated 15.06.2024 and to direct the second respondent to allow the petitioner to redeem all the jewelry loan.

2.The petitioner is an agriculturalist and she obtained an agricultural vehicle loan from the Indian Overseas Bank, T.Kallupatti Branch, Madurai District, bearing loan No.023103911400001, based on cash and credit facilities in the year 2014, by mortgaging an agricultural property. On 04.03.2024, demanding to pay a loan amount of Rs.9,37,601.23/-, classifying the loan in loan account No.023103911400001 as a non-performing asset (NPA), the said bank directed the petitioner to fully satisfy her loan forthwith, in failure to do so, further action would be initiated under SARFAESI Act. During 2023, the petitioner had availed four jewelry loans for emergency/agricultural purposes in loan jewel loan account No. 219903214007376 dated 19.05.2023, 219903214007524 dated 07.06.2023, 219903214007900 dated 26.07.2023 and 219903214008827 dated 17.11.2023, with the Indian Overseas Bank Srivilliputur branch, that is, the second respondent. The redemption period for those agricultural jewelry loan is one year and even before the aforesaid loans fell due, for full satisfaction of the same, on 05.03.2024, the second respondent called upon the petitioner to repay all the aforesaid four jewelry loans and the tractor loan dated 03.02.2014, availed by the petitioner. In the said notice dated 05.03.2024, the second respondent mentioned that the petitioner's present liability would stand to Rs.16,27,198/- inclusive of undebited interest and other charges. For which, the petitioner by reply notice dated 23.04.2014, duly informed that the currency period for redemption of the jewelry loan has not expired. As far as the tractor loan is concerned, the same is a hypothecation tractor loan. The jewelry loan and the tractor loan are fully different in its nature and the agreement between the borrower and borrowee with respect to the hypothecated tractor loan and the jewelry loan are completely different in its scope and as such, the petitioner called upon the second respondent bank to withdraw the issued recovery notice dated 05.03.2024 and to issue a notice afresh as far as the tractor loan is concerned. However, negating the petitioner's reply, the impugned auction notice dated 15.06.2024, came to be issued with respect to the four jewelry loan of the petitioner, challenging the same the writ petitioner is before me.

3.The learned Standing Counsel appearing for the second respondent bank placed before me the application for loan/cash credit on the security of gold jewelry made by the petitioner for availing the four jewelry loans. Relying upon condition Nos.9.13 and 9.14 of the conditions on the basis of which the loans/cash credit were advanced, on the security of ornaments and jewelry pledged with the bank, the learned counsel submitted that the bank shall have a lien on jewels in respect of any other money which the borrower may be liable to pay to the bank and on that basis, the learned counsel submitted that there is no wrong on the part of the bank for having brought the jewelry loan, under NPA category after the petitioner's tractor loan has been declared as NPA and on that basis, he pressed for dismissal of the Writ Petition.

4.Heard the learned counsels on either side and carefully perused the entire materials available on record.

5.The recall notice for payment of pending dues dated 04.03.2020, caused by the Senior Manager of the Indian Overseas Bank, T.Kallupatti Branch, has cautioned the petitioner calling upon her to pay the entire dues totaling to Rs.9,37,601.23/- plus interest payable to them with immediate effect, failing which the petitioner's account would be classified as NPA for non-payment of installments and interest to the tractor loan bearing No. 023103911400001 and further cautioning her that the bank would initiate course of recovery action under SARFAESI Act and all other recovery remedies including seizure of property would be affected. Consequently, it is understood that on the very next day, the second respondent bank had issued a notice on the petitioner fixing the liability of the petitioner as Rs. 16,27,198/- for all the four jewelry loan dated 19.05.2023, 07.06.2023, 26.07.2023, 17.01.2023 and the tractor loan dated 03.02.2014 and called upon the petitioner to remit the entire loan amount with interest and other charges within a period of 15 days from 05.03.2024. Further on 04.04.2024, a similar notice dated 04.04.2024, calling upon the petitioner to fully satisfy all the four jewelry loans including the tractor loan dated 03.02.2014, fixing the total liability of the petitioner as Rs.18,63,035/- within 15 days from 04.04.2024 came to be issued by the second respondent. The currency for redemption of the jewelry loan dated 19.05.2023, would expire by 19.05.2023 and the other three jewelry loans would expire by 07.06.2023, 26.07.2023 and 17.11.2023. However, even before the expiry of the currency of redemption for two of the jewelry loans, the second respondent bank had notified auction notice for all the four jewelry loan on 15.06.2024. Clause 9.13 and 9.14 of the conditions on which loans/cash credit were advanced on the security of ornaments and jewelry pledged with the second respondent bank to which the petitioner had given her consent is extracted as follows:-

> *"9.13.The Bank shall have a lien on the jewels in respect of any other sum of sums of money which the borrower may by be liable to pay to the Bank either solely or jointly with other persons at any office of the Bank.*
>
> *9.14.Notwithstanding anything to the contrary contained herein before or in any agreement or otherwise it is specifically agreed and acknowledged that the Bank shall always be entitled to have the Bank's right of general lien and set off on the surplus money, if any remaining out of the slae of the pledged jewels against any of my/our liability of the Bank as borrower or guarantor."*

6.No doubt, the loan bearing account No.023103911400001, is a hypothecated tractor loan. As far as the agricultural vehicle loan is concerned, the notice dated 04.03.2024, issued by the Senior Manager, Indian Overseas Bank, T.Kallupatti branch, would reveal that the said Senior Manager had cautioned the petitioner that they would classify the said agricultural vehicle loan as NPA for the purpose of non-payment of installments and interest, if the petitioner failed to repay a total due of Rs. 9,37,601.23/- plus interest payable to them immediately. However, the bank did not produce any document, which would show that the aforesaid account has been classified as NPA post 04.03.2024. No doubt, on the date of issuance of first notice, that is, on 05.03.2024 and second notice, that is on 04.03.2024, for which the petitioner had duly responded by reply dated 23.04.2024, that the currency for redemption of all the four jewelry loan had not expired. In the meanwhile, without intimating her as to the details precisely as to how much amount she has to pay exclusively for the tractor loan alone and as to the details of having declared the petitioner's agricultural tractor loan as NPA, the second respondent had rushed to notify the impugned auction notice with respect to all the four jewelry loan without giving her an opportunity of repayment.

7.It is needless to state that the jewelry loans are nothing but pledge of movable properties. The Clause that the petitioner has specifically agreed that the jewelry was pledged towards jewel loan would continue to be a security for all the present and future indebtedness and liabilities, would make it sure that even if the petitioner had repaid the jewelry loan, in so far as the tractor loan is concerned, the contractual obligation obligates the petitioner to continue to keep the jewelry as a security even for the agricultural tractor loan availed by the petitioner, by virtue of her jewelry loan agreement, in which she herself has indirectly admitted the right of general lien available to the respondent bank under Section 171 of the Indian Contract Act, 1872. This is precisely due to the fact that the petitioner being bound by her contractual obligation by which she has availed the jewelry loan by being a signatory to her application for loan with certain conditions, the properties involved being movable properties and the same would fall within the scope of bailment under Section 148 of Indian Contract Act, 1872 and hence, it will directly fall within the scope and ambit of section 171 of the Indian Contract Act, 1872.

8.However, I find great hurry on the part of the second respondent bank in bringing all the jewelry to auction without putting the petitioner on notice as to the detail on which when the tractor loan was declared NPA and what was precisely the total amount which the petitioner is entitled to repay as far as the tractor loan is concerned on the date of declaring the said loan as NPA. Hence the impugned auction notice dated 15.06.2024, is hereby quashed and remanded back to the file of the second respondent. The petitioner is directed to forthwith to fully satisfy the jewelry loan as well as the tractor loan within a period of 4 months from the date of receipt of copy of this order. The second respondent bank is directed to retain the jewelry of the petitioner in the safety locker of the bank till the petitioner fully discharges her liability towards the tractor loan bearing No. 023103911400001 dated 03.02.2014. On discharging her liabilities particularly with respect to the tractor loan, then the second respondent bank shall release the petitioner's jewels, if she had fully satisfied the aforesaid loans.

9.Accordingly, the Writ Petition is allowed. There shall be an order as to costs. Consequently, connected miscellaneous petitions are closed.

27.01.2025

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

To
1.The Regional Manager/Authorized Officer,
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8/2 8/3 Chithambara Nagar First Street,
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2.The Branch Manager,
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Rajaji road,
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L.VICTORIA GOWRI, J.

Mrn

W.P.(MD)No.13777 of 2024

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