(2009) 04 MAD CK 0339

In the Madras High Court

Case No : Writ Petition No. 1924 of 2007 and M.P. No''s. 1 and 2 of 2007

V. Rangasamy Nadar APPELLANT

Vs

The Manager, State Bank of India RESPONDENT

Date of Decision : 29-04-2009

Acts Referred:

Citation : (2009) 04 MAD CK 0339

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : M.V. Muralidhaaran, for the Appellant; P.D. Adikesavalu, for the Respondent

Final Decision : Dismissed

Judgement

B. Rajendran, J.—By consent of the learned Counsel on either side, the writ petition itself is taken up for final hearing.

2. The above writ petition is filed for issuance of a writ of mandamus forbearing the respondent from bringing the petitioner''s property at No. 82/1 Arunachalakurukal Street, Taramangalam 636 502 Omalur Taluk, Salem District for public auction sale.

3. The only ground of attack of the petitioner is that the State Bank of India came forward with a compromise offer for a one time settlement with the petitioner and immediately he accepted the said offer. But now the respondents are attempting to evict the petitioner from his property and bring the property for sale in public auction. Be that as it may, the petitioner''s contention is that since the offer was made by the State Bank of India and he had accepted the offer the subsequent cancellation of the one time settlement on the ground that is is violative of the R.B.I. circular, is legally not sustainable. The compromise offer came from them and therefore he disputes the action of the respondent in bringing his property for sale in public auction.

4. Counter affidavit had been filed on behalf of the respondents, wherein the

following facts have been set out.

The State Bank of India, Taramangalam Branch, Salem District, the respondent herein, had filed a suit in O.S. No. 212 of 1994 before the Sub Court, Sankari for recovery of debts due and payable by the petitioner and a preliminary decree was passed as early as 14.12.1994 against the petitioner and thereafter a final decree has also been passed. But, unfortunately, the State Bank of India without taking into consideration the decree having already been passed, in the routine manner sent the proposal for One Time Settlement to every customer including the petitioner. Though the One Time Settlement was offered, the petitioner has not paid the amount but has chosen to file the present writ petition. In pursuance of the interim order passed by this court only the petitioner has deposited a sum of Rs. 54,480/-. Even this amount is kept by the respondent in separate account. As the petitioner has not complied with the One Time Settlement, he will not have any right to compel the respondent to accept the O.T.S. Further, the discrepancy committed by the State Bank of India cannot be taken advantage by the petitioner to seek for the relief of mandamus preventing the respondent from bringing the property for sale in public auction. The one time settlement to be offered by the Bank could only be in accordance with the Reserve Bank of India Circular and the circular clearly states that the cases pending before courts where decrees have been obtained will not be covered under the RBI OTS- SME. Pursuant to the R.B.I. Circular only they have taken action to recover the amount by bringing the property for sale.

5. I have heard the the learned Counsel appearing for the petitioners and the learned Counsel appearing for the respondents.

6. A cursory perusal of the Reserve Bank of India Guidelines would categorically indicate that the Banks cannot enter into any one time settlement, if the suit has been filed and a decree has been passed in respect of the amount due and payable by the debtor. Admittedly, in this case the suit has been decreed and a valid decree has been passed. Therefore, the one time settlement offered by the Bank is in violation of the R.B.I Guidelines.

7. The next point for consideration would be whether in the light of the R.B.I circular, the Bank could make an offer for such One Time Settlement. In this respect, the learned Counsel appearing for the respondent points out that unfortunately one wing of the Bank has failed to take into consideration the relevant position and the civil suit pending before the Sub court against the writ petitioner. The earlier letter of offer was only a routine letter sent to all the creditors. Taking advantage of such a letter, the petitioner has come forward with the present writ petition challenging action of the respondent in bring the property for sale.

8. In this connection, the learned Counsel appearing for the respondent has brought to the notice of this court the decision of the Supreme Court in Civil Appeal No. 4929 of 2004 (Calibre Knives Pvt. Ltd. and Anr. v. State Bank of

India) dated 3.8.2004, wherein the State Bank of India itself is a party. In that case also the debtor approached the State Bank of India for one time settlement scheme evolved by them in accordance with the guidelines of the Reserve Bank of India. But the Debt Recovery Tribunal has already passed an order in favour of the Bank and further a recovery certificate was also issued. Without being aware of the stage of the proceedings before the Tribunal, the One Time Settlement was arrived at by the Bank. Later on, the settlement was withdrawn by the Bank. Even in that case, the Supreme Court has passed an order which reads as follows:

Therefore, it is obvious that the letter was issued without being aware of the factual position in regard to the decision of the Debt Recovery Tribunal and the issuance of recovery certificate.

Hence the present case is identical in nature and the same is covered by the judgment of the Supreme Court.

9. On a careful consideration of the facts and circumstances of the case and as perm the decision in the unreported judgment of the Supreme Court cited above, this Court is of the view that in this case also an identical mistake has been committed by the State Bank of India. Hence, the action of the respondent in bringing the property for sale is valid in law and it has been done pursuant to the R.B.I circular. The State Bank of India is empowered to recall and withdraw the offer of One Time Settlement in accordance with the Reserve Bank of India circular and in accordance with the judgment of the Supreme Court. Hence, the petitioner is not entitled for the relief sought for in the writ petition.

10. For the foregoing reasons, the writ petition is dismissed. Consequently, the connected M.Ps are closed. No costs. It is made clear that the amount deposited by the writ petitioner as per the interim order of this court will be adjusted by the State Bank of India towards the final settlement of the loan as per the decree granted by the civil court.

11. At this juncture, the learned Counsel for the petitioner submits that the petitioner wants to approach the State Bank of India for getting any concession, dehors the Reserve Bank of India Circular, if he is eligible. It is always open to the petitioner to approach the State Bank of India to seek any remedy including concession, which may be available to him.