

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14/12/2016

C O R A M

The Honourable Mr. Justice S. Manikumar
and
The Honourable Mr. Justice M. Govindaraj

Writ Petition No. 7029 of 2015

V. Veeramani ... Petitioner

Vs

1. The Regional Manager
ICICI Home Finance Ltd
Arihant Building
Second Floor
East Wing, South Phase
Plot No. 24, Block No. 1
Ambattur Industrial Estate
Ambattur
Chennai 600 058.

2. The Manager
ICICI Home Finance Ltd
Below ICICI Bank
Cheran Plaza
Opp. To Kannan Department Stores
Trichy Road
Coimbatore 641 018.

3. The Authorised Signatory
Asset Reconstruction Company
(India) Ltd
No. 45 Montieth Road
Egmore
Chennai 600 008.

Now Office at

715 - C, Seventh Floor
Spencer's Plaza
Phase II
769 Anna Salai
Chennai 600 002.

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4. The District Collector
Sampath Nagar
Erode District
Erode 638 011.

5. The Deputy Collector
Office of the Deputy Collector-cum-
Sub-Divisional Magistrate
Gobi Chettipalayam
Erode District.

6. The Tahsildar
Taluk Office
Gobi Chettipalayam
Erode District.

7. The Superintendent of Police
Erode District
Panneerselvam Park
Erode.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the respondents 1 to 3 to consider the representation of the petitioner dated 18/2/2015 in accordance with law by permitting the petitioner to settle the dues as one time settlement and discharge the house loan pertaining to the house at No.17 Perianna Veedhi, No.2, Modichur, Gobichettipalayam, Erode District.

For petitioner ... Mr.R.Sankarasubbu

For respondents ... Mr.V.Jayachandran

for R.R.1 to 3

Mr.K.V.Dhanapal

Additional Government Pleader

for R.R.4 to 7.

O R D E R

(Order of the Court was made by S.Manikumar,J)

Prayer sought for in the writ petition is to direct the respondents 1 to 3, to consider the representation of the petitioner, dated 18/2/2015, in accordance with law by permitting the petitioner to settle the dues as one time settlement and to discharge the house loan, pertaining to the house at No.17 Perianna Veedhi, No.2, Modichur, Gobichettipalayam, Erode District.

2. After considering a catena of decisions on the legal right of a person to seek for writ of mandamus, a Hon'ble

Division Bench of this Court in Tamilnadu Industrial Investment Corporation Vs. Millenium Business Solutions Private Limited, reported in 2004 (5) CTC 689, at Paragraph Nos.7,8,16 and 18, held as follows:

"7. In our considered opinion it is not proper for the Court to interfere in such matters relating to recovery of loans. Such matters are contractual in nature and writ jurisdiction is not the proper remedy for this. A writ lies when there is an error of law apparent on the face of the record, or there is violation of law. No writ lies merely for directing one time settlement or for directing re-scheduling of the loan or for fixing instalments in connection with the loan. It is only the bank or the financial institution which granted the loan which can re-schedule it or fix one time settlement or grant instalments. The Court has no right under Article 226 of the Constitution to direct grant of one time settlement or for re-scheduling of the loan, or to fix instalments.

8. No doubt Article 226 on its plain language states that a writ can be used by the High Court for enforcing a fundamental right or for 'any other purpose'. However, by judicial interpretation the words 'any other purpose' have been interpreted to mean the enforcement of any legal right or performance of any legal duty, vide *Calcutta Gas Co. v. State of West Bengal*, AIR 1963 SC 1044. In the present case, the writ petitioner has really prayed for a Mandamus to the Corporation to grant it a one time settlement, but no violation of any law has been pointed out. In our opinion, no such mandamus can be issued in this case, and hence the writ petition should not have been entertained. A mandamus is issued only when the petitioner can show that he has a legal right to the performance of a public duty by the party against whom the mandamus is sought.

16. A loan is granted in terms of the contract, and grant of one time settlement or re-scheduling of the loan amount is really a modification of the contract, which can only be done by mutual consent of the parties, vide Section 62 of the Contract Act, 1872. The Court cannot alter the terms of the contract.

18. Before parting with the case we would like to mention that recovery of tens of thousands of crore rupees of loans of banks and financial institutions has been held up by Court orders under Article 226 proceedings which were really unwarranted. However, much sympathy a Court may have for a party, a writ Court must exercise its jurisdiction on well settled principles, and not a mere sympathy or compassion. No doubt, there be hardship to a party, but unless violation of law is shown the Court cannot interfere. Holding up recoveries of loans by unwarranted Court orders is causing incalculable harm to our economy, since unless the loan is recovered a fresh loan cannot be granted to needy persons. The Courts must keep these considerations in mind."

3. Following the same, in M/s.Digivision Electronics Ltd., Registered Office at No.A5 & 6, Industrial Estate, Guindy, Chennai - 32 Vs. Indian Bank, rep. by its Deputy General Manager, Head Office, 31, Rajaji Salai,

Chennai-1 and another, reported in 2005 (3) LW 269, at paragraph No.42, a Division Bench of this Court held as follows:

"42. Some of the learned counsel submitted that the Court should direct one time settlement or fixing of installment or rescheduling the loan. In Tamilnadu Industrial Investment Corporation Vs. Millenium Business Solutions Private Limited, 2004 (5) CTC 689, it has been held that this Court cannot pass any such order in writ jurisdiction, since directing one time settlement or granting installments is really re-scheduling the loan, which can only be done by the bank or financial institution which granted the loan. This Court under Article 226 of the Constitution cannot reschedule a loan. A writ is issued when there is violation of law or error of law apparent on the face of the record, and not for rescheduling loans. The Court must exercise restraint in such matters, and not depart from well settled legal principles".

4. At paragraph No.46, in M/s.Digivision Electronics Ltd., Registered Office at No.A5 & 6, Industrial Estate, Guindy, Chennai - 32 Vs. Indian Bank, rep. by its Deputy General Manager, Head Office, 31, Rajaji Salai, Chennai-1 and another, reported in 2005 (3) LW 269, the Hon'ble Division Bench has further held as follows:

"46. Writ is a discretionary remedy, and hence

this Court under Article 226 is not bound to interfere even if there is a technical violation of law, vide R.Nanjappan Vs. The District Collector, Coimbatore, 2005 WLR 47, Chandra Singh Vs. State of Rajasthan, JT 2003 (6) SC 20. The Managing Director, Tamil Nadu State Transport Corporation (Madurai Division-IV) Ltd., Dindigul Vs. P.Ellappan, 2005 (1) MLJ 639, Ramniklal N.Bhutta and Another Vs. State of Maharashtra, 1997 (1) SCC 134, etc."

5. In the light of the above decisions, this writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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Erode.

+1cc to Mr.V. Jayachandran, Advocate, S.R.No.73053

rk(CO)
md(06/01/2017)

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सत्यमेव जयते

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