

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2016

CORAM

THE HONOURABLE MR. JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

Writ Petition No.27114 of 2016 and

WMP.No.23293 of 2016

M/s.M.P.Shan Tex Pvt. Ltd.,
rep. By its Managing Director,
P.Uma Shankar,
Son of Mr.K.Palaniswami,
Having its Head Office
at No.S.F.145/1A/A Near Amman Kovil,
Parapalayam, Mannarai Post,
Tirupur-641 607. Petitioner

vs.

1.The Chief Manager-cum-Authorised Officer,
State Bank of India,
Stressed Assets Management Branch,
Raja Plaza, First Floor,
1112, Avinashi Road,
Coimbatore-641 037.

2.The Chief Manager,
Corporation Bank,
Industrial Finance Branch,
1604, Trichy Road,
Coimbatore-641 018.

3.The Chief Manager,
State Bank of Travancore,
Coimbatore Main Branch

.... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of mandamus, directing the 1st respondent bank to consider the one time settlement submitted to 1st respondent on 23.06.2016 and 18.06.2016 and thereby render justice.

For Petitioner

: Ms.R.Sripriya
for M/s.V.Raghavachari

For 1st Respondent : Mr.O.M.Prakash,
for M/s.Ramalingam & Associates

For 3rd respondent : M/s.F.B.Benjamin George

ORDER

(Order of the Court was made by Mr.MANIKUMAR, J.)

M/s.M.P.Shan Textile Private Limited represented by its Managing Director P.Uma Shankar, Tirupur-borrower, who availed loan from the respondent Banks, has defaulted. Proceedings were initiated under the SARFEASI Act, 2002. Notice under Sections 13(2) and 13(4) of the Act were also issued. The respondents wanted to take physical possession and therefore, filed an application under Section 14 of the SARFEASI Act, 2002 seeking assistance from the District Collector-cum-District Magistrate, Coimbatore. Sale Notice dated 01.07.2016 also has been issued. At this juncture, the petitioners seemed to have made request to the State Bank of India, Stressed Assests Mangement Branch, Coimbatore, to consider one time settlement. Contending inter alia that there was no response, instant writ petition has been filed for Writ of Mandamus, directing the Chief Manager-cum-Authorised Officer, State Bank of India, Stressed Assets Management Branch, Coimbatore, to consider One Time Settlement on the basis of the representations dated 23.06.2016 and 18.06.2016 respectively.

2. Record of proceedings shows that when the matter came up for admission, a Hon'ble Division Bench of this Court, passed the following orders :

'Subject to deposit of Rs.10,00,00,000/- (Rupees Ten Crores Only) towards the due, on or before 24.08.2016, there shall be an order of stay of further proceedings, failing which the interim order shall stand automatically vacated. However, the petitioner shall make every effort to go for OTS.

Meanwhile, there shall be notice to the respondents. Private Notice is also permitted. List on 29.08.2016.

It is also made clear that the petitioner shall make efforts to settle the dues to the expectation of the Bank and not by just making a formal offer of certain amount.'

While ordering notice to the respondents, the Hon'ble Division Bench of this Court, granted interim stay of further proceedings, subject to the deposit of a sum of Rs.10,00,00,000/- towards dues on or before 24.08.2016 failing which the interim stay would stand automatically vacated.

3. The Division Bench has also made it clear that the petitioner should make efforts to settle the dues to the expectation of the bank and not by making a formal offer of certain amount.

4. Responding to the notice, the Chief Manager, State Bank of India, Stressed Assets Management Branch, Coimbatore, has filed a detailed counter affidavit, contending inter alia that in the letters dated 23.06.2016 and 18.06.2016 referred to in the prayer, nothing was mentioned about the One Time Settlement.

5. Mr.O.M.Prakash, learned Counsel for the Banks submitted that when no supporting documents have been filed, averments made in the affidavit are false and therefore, the Writ Petitioner not only deserves for the relief sought for, but should also be put on terms.

6. However, going through the typed set of papers, we find that there are some letters written by the Writ Petitioners seeking for One Time Settlement. Though the aboveread letters dated 23.06.2016 and 18.06.2016 do not refer to the same, we are of the view that there should be some mistake in drafting, but it cannot be said that there was no request at all.

7. Prayer for a Writ of Mandamus directing the 1st respondent Bank to consider the representation for One Time Settlement is not maintainable, in the light of the decision of a Hon'ble Division Bench of this Court 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, wherein at paragraph No.42, 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 rescheduling 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".

8. At paragraph No.46, in M/s.Digivision Electronics Ltd., Retistered 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 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."

9. Added further, Ms.Sripriya, learned Counsel appearing for the Writ Petitioners submitted that the interim order dated 04.08.2016 has not been complied with. The petitioner, who has failed to comply with the conditional order of stay, is not entitled for any equitable orders. Interim order of stay is vacated.

10. In the light of the above discussion and the decisions cited supra, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

1.The Chief Manager-cum-Authorised Officer,
State Bank of India,
Stressed Assets Management Branch,
Raja Plaza, First Floor,
1112, Avinashi Road,
Coimbatore-641 037.

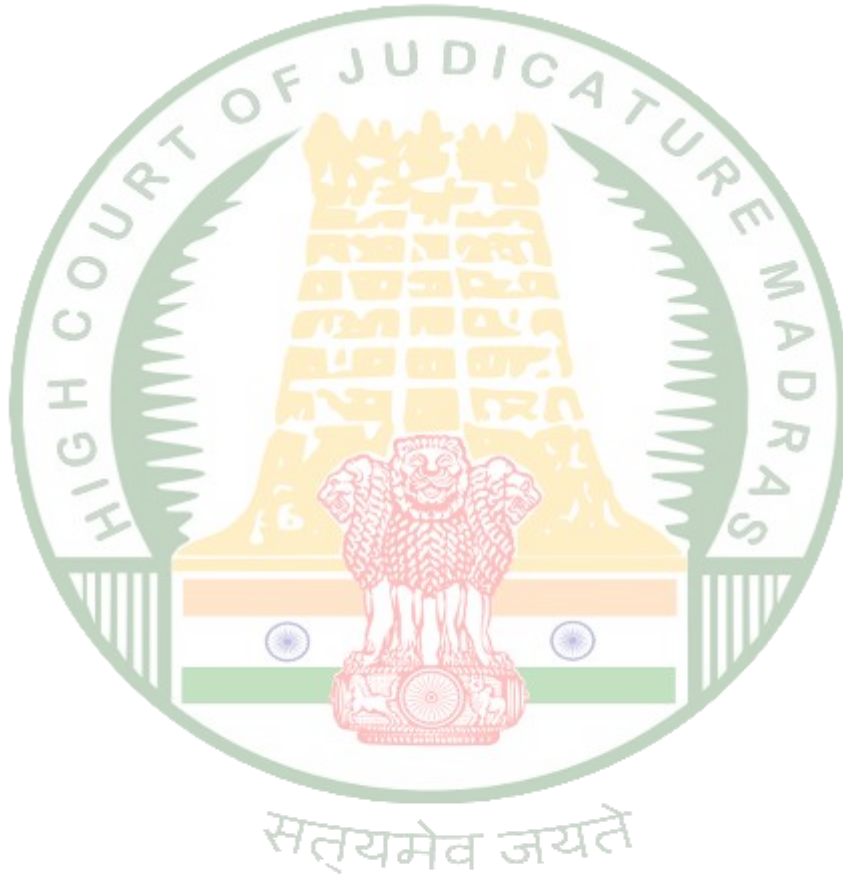
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Coimbatore-641 018.

3.The Chief Manager,
State Bank of Travancore,
Coimbatore Main Branch

2 ccs to M/s. Ramalingam, Associates, Sr. 74908
1 cc to Mr.F.B. BEnjamin George, SR. 74595
1 cc to MR.V. Raghavachari, Advocate, Sr. 74428

W.P.No.27114 of 2016

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