

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2016

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE N.AUTHINATHAN

Writ Petition No.30180 of 2016

and

WMP No.26155 of 2016

M/s.Sipali Drugs
Rep. by its Proprietor Mr.Rajiah
No.34, Ellaya Mudali Street
Old Washermenpet
Chennai - 600 021

..... Petitioner

vs.

1.The Authorised Officer
Bank of India, Asset Recovery Branch
"Star House", I Floor
No.30, Errabalu Street
Chennai - 600 001

2.The Branch Manager
Bank of India, Washermenpet Branch
No.123, G.A. Road, Old Washermenpet
Chennai - 600 021

3.The Presiding Officer
Debts Recovery Tribunal II
Spencers Annexe Buildings
Chennai - 6

... Respondent

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus calling for records relating to the 1st respondent notice of auction made in Ref. No.SOW:SALE NOTICE:2016-17:28 dated 20.07.2016 to quash the same and to consequently direct the respondent to afford an opportunity of an outer time limit for one time settlement.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.F.B.Benjamin George
for R1 and R2

ORDER

(delivered by S.MANIKUMAR, J)

Challenge in this writ petition, is to a Sale Notice dated 20.7.2016 and consequently the borrower/writ petitioner, has sought for a direction to the respondents to provide an opportunity of outer time limit for one time settlement.

2. Record of proceedings shows that, on 30.8.2016, while ordering notice to the learned counsel for the respondents 1 and 2, this court has granted interim stay of the auction sale, subject to the condition that the petitioner deposits a sum of Rs.50,00,000/- (Rupees fifty lakhs) on or before 19.9.2016. Registry has been directed to list the writ petition on 19.9.2016. Subsequently, when the matter came up on 19.9.2016, this court has ordered as follows:

"Though on 30.8.2016, this court granted interim stay of the auction sale, subject to the condition that the petitioner depositing the sum of Rs.50 Lakhs on or before 19.9.16 and directed the registry to list the matter, Mr.L.Chandrakumar, learned counsel for the writ petitioner submitted that he has to get instructions from his client as to whether the said amount has been deposited or not.

Mr.Sivaguru, learned counsel representing the learned counsel for the respondent, submitted that in the auction conducted on 31.8.2016, there were no bidders and the amount as directed has not been deposited.

Post on 27.9.2016."

Further this court directed the Registry to list the matter on 27.9.2016. On the said day, Mr.F.B.Benjami George, learned counsel for the respondents 1 and 2, submitted that the prayer made in the writ petition is not maintainable under Article 226 of the Constitution of India. For production of a copy of the judgment relied on by him, the matter stood adjourned.

3. Today, Mr.L.Chandrakumar, learned counsel for the petitioner, seeks permission of this court, to withdraw the writ petition, which we are not inclined to grant, for two reasons.

4. Firstly, the conditional order has not been complied with. Secondly, on the prayer sought for, it is useful to refer to paragraph Nos.42 and 46 of this judgment in Digivision Electronics Ltd. v. Indian Bank reported in 2005 (3) CTC 513,

"42. Some of the learned counsel submitted that the Court should direct one time settlement

or fixing of installments or rescheduling the loan. In Tamil Nadu Industrial Investment Corporation v. Millenium Business Solutions Pvt. Ltd., 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.

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 v. The District Collector, Coimbatore, 2005 WLR 47; Chandra Singh v. State of Rajasthan, JT 2003 (3) SC 20; The Managing Director, Tamil Nadu State Transport Corporation (Madurai Division - IV) Ltd. Dindigul v. Ellappan, 2005 (1) MLJ 639; Ramniklal N.Bhutta and Another v. State of Maharashtra, 1997 (1) SCC 134; etc. To obtain a writ the petitioner must not only show that the law is in his favour, he must also show that equity is in his favour. In these cases even assuming that there is some technical violation of law, there is no equity in the petitioners' favour. Hence, we are not inclined to exercise our discretion under Article 226 in these cases in favour of the petitioners who have been informed by Mr.V.T.Gopalan, learned Senior Counsel for some of the banks that about Rs.1,34,000 Crore of bank loans are outstanding in India and have not been repaid. In many cases, there have been interim orders of various Courts which have stayed the recoveries. Many of such interim orders were wholly unjustified, and passed only by adopting an over liberal approach. Unless repayment of the loan is done the bank or financial institution cannot grant a fresh loan, and hence new industries cannot be set up. Thus, by staying such recoveries incalculable harm has been done, and will continue to be done, to the economy, because persons who are genuinely in need of loans for setting up new industries cannot get such loans because the borrowers have not repaid them. This court should certainly not countenance such grave malpractices."

In the light of the above discussion and the decision, prayer sought for in the writ petition cannot be granted. Writ Petition is dismissed. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

asr

To

- 1.The Authorised Officer
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1 cc to Mr.L.Chandrakumar, Advocate, Sr. 55520
1 cc to Mr.F.B.Benjami George, Advocate, Sr. 55547

W.P.No.30180 of 2016

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