IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE V.BHAVANI SUBBARAYAN

Writ Petition No.10018 of 2017
W.M.P.No.11025 of 2017

M/s.Ratna Stores (P) Ltd.,
Rep., by its Director,
S.Sivasundar, S/o.P.S.Sivaperumal .... Petitioner

vs.

The Chief Manager,
UCO Bank,
MID Corporate Branch,
Burkit Road, T.Nagar,
Chennai 600 017. .... Respondent

WRIT Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent bank to restore the OTS Proposal, dated 27.09.2016, vide letter Ref.ARSPL/UCO/OTS/2709, by granting further time of 6 months to the petitioner for repayment of unpaid amount of Rs.27.60 Crores.

For Petitioner : Mr.A.Umashankar

For Respondent : Mr.V.Suthakar

ORDER

(Order of this Court was made by S.MANIKUMAR, J)

M/s.Rathna Stores (P) Ltd., T.Nagar, Chennai, has sister concerns, M/s.Rathna Stores Firm and M/s.Rathna Stores in Chennai. Sister concerns had availed various credit facilities from UCO bank, by mortgaging properties.

2. The writ petitioner has committed default and UCO bank brought the properties, for auction, which was challenged by M/s.Rathna Stores (P) Ltd., T.Nagar, Chennai, in S.A.No.24 of 2014, on the file of the Debts Recovery Tribunal-II, Chennai. On 27.03.2014, in S.A.No.24 of 2014, the DRT-II, Chennai, has passed the following order,

“1. Applicant's counsel submitted that, certain negotiations are going on with the officials of the respondent bank and the proposals have been sent to Head Office of the Bank for consideration. In the meantime, Ld. Counsel for respondent bank, on caveat, was present and submitted to this Tribunal that the respondent bank has already issued Sale Notice fixing the sale date as 02.05.2014 for two items of property, namely,

a) Land measuring 6000 sq ft and small commercial building in the [lame of Rathna Stores Pvt Ltd. situated at Plot NoA675, Old NO.AA12 , Present Door No.87, TS No.118, Naduvakkarai Village, Egmore Ward, which is morefully described in the Sale Notice as item No.1 and

b) land measuring 8034 sq ft and commercial building with Ground +5 floors totally measuring . 30240 sq.ft in the name of Rathna Stores Pvt. ltd situated at TS No.6044/1, 6063/1, 6064/1, T.Nagar Village, Mambalam Ward, which is morefully described in the Sale Notice as item No.2 of the Sale Notice.

The applicant's Counsel submitted that they would like to settle the dues and also willing to deposit Rs.4 crore within four weeks from today and also agreed to deposit another Rs.4 crores within four weeks thereafter.

3. Respondent's counsel under instructions also submitted that the applicant has agreed to deposit Rs.8 crores. But the negotiations are underway. The present SA is filed on 24.02.2014and since then, only negotiations are going on but no payments were received by respondent-Bank.

4. Heard the submissions of the counsels and in the interest of equity, justice and fair play, this Tribunal directs as under:

i) Applicant to pay Rs.4 crore (Rupees Four Crore only) either by way of Demand Draft, Cash or Pay Order as may be acceptable to the respondent bank on or before 25.04.2014 and the respondent is directed not to take physical possession of the properties till 25.04.2014;

ii) In the event, the applicant pays the amount as directed above, the proposed sale on 02.05.2014 shall be postponed by the respondent bank. However, if the applicant fails to deposit the amount as directed herein or seeks extension of time by moving an application, liberty is granted to the respondent bank to proceed with the sale in the manner known to law;

iii) Apart from the payment of Rs.4 crores as directed above, the applicant shall also deposit another sum of Rs.4 crore (Rupees Four Crore only) to the respondent bank on or before 23.05.2014 and the respondent bank shall not dispossess the applicant till such time. However, in the event, the applicant fails to deposit the said amount as directed herein or seeks extension of time by moving any application, liberty is granted to the respondent bank to proceed with the sale as deemed fit under the law.

5. Respondent's counsel to file counter and type-set of papers. Matter be called on 28.04.2014 for compliance and counter."

3. Subsequently, on 22.05.2014, the matter has been mentioned and DRT-II, Chennai, has passed orders in I.A.Nos.141 and 142 of 2014 in S.A.No.24 of 2014 and the same is extracted hereunder:

"IA 141/2014 & IA 142/2014 have been filed by petitioner/applicant seeking extention of time for payment and stay. Respondent bank has to file their counter. Counsel for respondent bank submitted that, as per the order dated 27.03.2014, in the event the applicant fails to deposit the amount as directed or seeks extension of time by moving any application, liberty is granted to the respondent bank to proceed further unless the said order is challenged in appeal. At the same time, the applicant submitted that the bonafides of the applicant has been proved by paying the 1st part of the direction and seeks only extension of time for the payment of 2nd part. For filing counter, call on 06.06.2014."

4. On 05.11.2014, S.A.No.24 of 2014, has been dismissed for default. Order in S.A.No.24 of 2014, reads as follows:

"Both sides called absent. No representation. SA is dismissed for default. No costs."

5. Thereafter, M/s.Rathna Stores (P) Ltd., T.Nagar, Chennai, has filed W.P.No.33718 of 2015, for a Writ of Mandamus, directing the UCO Bank, not to take any further action, pursuant to the notice, under Rule 8(5) of the Security Interest (Enforcement) Rules, 2002 (Hereinafter referred to as, "the Act"), dated 14.09.2015, for a period of four months, so as to

enable the petitioner to close the entire loan amount, in the respondent-Bank. Taking note of the submission of the learned counsel for the respondent-Bank that the bank has decided to issue a fresh auction notice, under Rule 8(5) of the SARFAESI Rules, 2002 and since the earlier notice, for conducting auction, had been withdrawn, this Court, vide order, dated 27.10.2015, dismissed the writ petition on the ground that nothing survives in W.P.No.33718 of 2015.

6. Once again, the writ petitioner has filed W.P.No.28157 of 2016, for a Mandamus, directing the respondent to consider the proposal given by the petitioner, dated 22.07.2016 and enable the petitioner to make the payment of its dues as per the schedule given in the proposal.

7. On 11.08.2016, a Hon'ble Division Bench has ordered notice in the said writ petition. On 13.02.2017, when the matter came up for hearing, there was no representation. Registry has been directed to post the writ petition, under the caption, "For Dismissal". On 14.02.2017, There was no representation, on behalf of the petitioner. However, Mrs.Hemalatha, learned counsel appearing for the UCO Bank has submitted that though time has been granted, payment has not been made. As there was no representation for the petitioner, either in person or through pleader, a Hon'ble Division Bench of this Court [One of us, is the party to the judgment (Justice S.Manikumar)], vide order, dated 14.02.2017, dismissed the said writ petition, for default.

8. When the abovesaid writ petition, ie., W.P.No.28157 of 2016, was pending, the writ petitioner seemed to have made a proposal on 27.09.2016, to the Bank, requesting for one time settlement/revised proposal. Details of which, are reproduced hereunder:

RATHNA STORES (P) LIMITED
"SIVA COMPLEX"
79, USMAN ROAD, T.NAGAR, CHENNAI-600 017.

Ref.RSPL/UCO/OTS/2709 27th September, 2016

To

The Managing Director/Executive Director,
UCO Bank, BTM Sarani,
Kolkata 700 071.

Dear Sirs,

Sub: Request for One-Time Settlement – Revised Proposal

Further to our discussions with Executive Director and with the Directors of Rathna Stores Private Limited at UCO Bank, Head Office, today, we submit the following revised proposal for One Time Settlement for the following companies for an amount of Rs.53.60 Crores, due to UCO Bank.

1. Rathna Stores Private Limited,
2. Rathna Stores (Firm)
3. Rathna Stores

Option A

Amount/Property to be released	Time Line
Rs.51 Crores : Kennath Lane, Egmore, Usman Road, T.Nagar & Hotal Sivapriya, Kodaikanal Properties to be released on payment of Rs.51 Crores.	During anytime within 4 months on or before 31st January' 2017 subject to a minimum of Rs.5.30 Crores in the no-lien account to be deposited on or before 20th October' 2016.
Rs.2.60 Crores : T.Nagar, Pondy Bazaar Property to be released on payment of balance Rs.2.60 Crores (after payment of Rs.51 Crores)	On or before 31st January, 2017

Option B

Amount/Property to be released	Time Line
Rs.26 Crores : Kennath Lane, Egmore property to be released on payment of Rs.26 Crores	Shall be paid within one month subject to a minimum of Rs.5.30 Crores in the non-lien account on or before 20th October, 2016
Rs.25 Crores : Usman Road, T.Nagar & Hotal Sivapriya, Kodaikanal to be released on payment of Rs.25 Crores.	On or before 31st January, 2017
Rs.2.60 Crores : T.Nagar, Pondy Bazaar Property shall be released on payment of Rs.2.60 Crores	On or before 31st January, 2017

We request UCO Bank to kindly advise your approval in order to proceed with the above One Time Settlement Proposal.

Thanking you,

Yours faithfully,
For Rathna Stores Private Ltd.,
Sd/-
Director.

9. Proposal for One Time Settlement/Revised Proposal, extracted supra, shows that the petitioner has offered to make payment, on or before 31.01.2017. Responding to the revised proposal, dated 27.09.2016, UCO Bank, has agreed for settlement, as hereunder:

UCO Bank
(A Government of India Undertaking)

ADV/OTS/26/2016-17 05.10.2016

M/s.Rathna Stores (P) Ltd.,
"Siva Complex",
37, Usman Road,
T.Nagar, Chennai 600 017.

Dear Sir,

Settlement of dues – M/s.Rathna Stores Group of Accounts, viz., M/s.Rathna Stores Pvt. Ltd., M/s.Rathna Stores (Firm) and M/s.Rathna Stores

We refer to your letter No.RSPL/UCO/2709, dated 27.09.2016 and subsequent discussions your representative had with us in respect of settlement of the dues of the Bank.

We write to inform you that Competent Authority has approved the following proposal of the company/firm/yourself for settlement of dues in respect of the financial assistance availed from the Bank envisaging inter alia as under:-

1. Payment of Rs.53,60,00,000/- (Rupees fifty three crore sixty lakh only) towards full and final settlement of dues of Rathna Stores Group of accounts as above with our Branch.

2. The settled amount shall be paid on or before 31.01.2017 as detailed below:

Option A

Amount/Property to be released	Time Line
Rs.51 Crores : Kennath Lane, Egmore, Usman Road, T.Nagar & Hotal Sivapriya, Kodaikanal Properties to be released on payment of Rs.51 Crores.	During anytime within 4 months on or before 31st January' 2017 subject to a minimum of Rs.5.30 Crores in the no-lien account to be deposited on or before 20th October' 2016.
Rs.2.60 Crores : T.Nagar, Pondy Bazaar Property to be released on payment of balance Rs.2.60 Crores (after payment of Rs.51 Crores)	On or before 31st January, 2017

Option B

Amount/Property to be released	Time Line
Rs.26 Crores : Kennath Lane, Egmore property to be released on payment of Rs.26 Crores	Shall be paid within one month subject to a minimum of Rs.5.30 Crores in the non-lien account on or before 20th October, 2016
Rs.25 Crores : Usman Road, T.Nagar & Hotal Sivapriya, Kodaikanal to be released on payment of Rs.25 Crores.	On or before 31st January, 2017
Rs.2.60 Crores : T.Nagar, Pondy Bazaar Property shall be released on payment of Rs.2.60 Crores	On or before 31st January, 2017

3. Waiver of compound interest and liquidated damages upto the date of settlement.

Please note that the aforesaid settlement proposal shall be subject to the terms and conditions given in the Appendix.

This letter is sent to you in triplicate. Kindly sign the same in triplicate/have the same singed, in triplicate, by duly authorized partner(s)/any of the Directors duly authorized in that behalf in terms of the provision of the Resolution passed by the Board of Directors in this regard if for any reason, it is not possible to have the same signed by any such authorized Directors. Kindly arrange to pass the necessary resolutions in his regard and have the letter singed. In triplicate by a Director duly authorized there under. Thereafter, you should relain the original and return the second and third copies to us.

Approved and accepted by .....by the hand of Shri......... Partner..........., Director and Shri...... Granted by the Board of Directors as its meeting held on .....day of ......

Terms and condition

1. The settlement scheme envisages payment of Rs. 53,60,00,000/- (Rupees fifty three crore sixty lakh only) towards full and final settlement if Rathna Stores Group of Accounts as above with our Branch and waiver of balance compound interest and liquidated damages up to the date of settlement.

2. The company/you shall make as mentioned under Option A/Option. The settlement amount would not carry any interest if paid on or before 31.01.2017

3. Without prejudice to clause 8 hereunder or otherwise in the event of default in payment under the settlement scheme, such defaul ts shall carry as and by way of liquidated damages @ 2% a quarterly rests over and above the BPLR of the Banks as may be prevailing at time of such default of the period of such default.

4. On your failure of the company to pay amounts as per the settlement scheme, the settlement shall stand revoked and your /the company's obligation and liability under the original loan Agreement with the Bank as modified form time to time. Shall revel to the full extent and the Bank shall be entitled to recover from your/the company/Guarantor the entire amount of principal interest and other monies as stipulated under the Loan Agreement and subsequently modified form time to time. The bank shall also be entitled to enforce the full security available to the bank for recovering its claim.

5. In case the terms of any future settlement proposal negotiated by other institutions are more favourable than that agreed to by the bank. The bank would have the right to improve upon the settlement amount in line with any such proposal.

6. All other terms and conditions as contained in the original loan agreement and subsequently, modified from time to time, will a so apply mutatis-mutandis till full payment of the settlement amount as per the scheme.

7. All the loans and guarantees/security documents shall remain in full force and effect till full payment of the settlement amount as per the scheme.

8. In the event the company/firm/you does not comply with any of the terms and conditions of the settlement scheme, the bank's approval to the settlement scheme shall stand cancelled without any further notice.

9. In case of suit filed accounts the borrower/guarantors shall file consent terms before

the court agreeing for a consent for the entire amount clamed in the plaint with interest costs and other reliefs prayed for in the plaint with condition that it the agreed compromise amount as above is paid within the agreed time and manner, the entire dues payable to the bank under the decree shall be deemed to have been satisfied. In case of a singe default in payment as per terms of comprise sated hereinabove the entire decretal amount with interest and costs shall be payable forthwith.

10. If any case or counter claim has been filed by the borrower/guarantors relating to the above account the same shall be withdrawn immediately and in future also no claim against the bank shall be filed in respect thereto.

11. This settlement scheme is without prejudice to the bank's rights and contentions under various loan documents/securities created by the company for availing the loan.

12. Acceptance of any amount after due date shall not amount to waiver of bank's right.

13. An undertaking shall be submitted to that effect that you will abide by the terms of sanction of the OTS arrived at based on your offer letter dated 27.09.2016, failing which OTS will be invalid and void."

10. Thereafter, the writ petitioner has paid a sum of Rs.26 Crores to the UCO Bank and got the Property No.1, at Kenneth Lane, Egmore released. Subsequently, the writ petitioner has made a representation to the UCO Bank, to extend the time, upto 30.06.2017, for payment of the balance amount of Rs.27.60 Crores. Responding to the above, the Bank, in his letter, dated 01.02.2017, stated the compromise proposal has been treated as failed. Details of the said letter, are reproduced hereunder:

Settlement of dues - M/s.Rathna Stores Group of Accounts, viz., M/s.Rathna Stores Pvt Ltd, M/s.Rathna Stores (Firm) and M/s.Rathna Store

Please refer to our letter ADV/OTS/26/2016-17 dated 05-10-2016 conveying approval of compromise proposal for payment of RS.53.60crores in full and final settlement of dues to the bank by of the above Rathna Group of account.

In connection with the said compromise. you had submitted a representation seeking extended time up to

30.06.2017 for payment of the remaining balance of RS.27.60 crores. We request you to furnish us the source of cash flow along with a firm commitment for payment of the said amount by the due date. it is observed that at the time of submitting the compromise proposal, you have not mentioned the existing attachment of the property by income tax authorities for the tax dues to the department. You are requested to furnish us the reason for not informing the bank about the attachment order of the income tax authorities.

Pending decision of the competent authority on the request for extended time for payment of the balance amount. Please fake notice that the compromise proposal is treated as a failed compromise with attendant consequences."

11. Again, the writ petitioner has sent a letter, dated 27.02.2017, to the Chief Manager, UCO Bank, Mid Corporate Branch, T.Nagar, Chennai, expressing difficulties in making payment, on account of attachment of the properties, by the Income-Tax Department, for the income-tax dues. The Bank, vide letter, dated 27.02.2017, has stated as follows:

"We invite reference to your letter dated 27.02.2017seeking balance payable in respect of the compromise proposal approved. In this connection, we have to inform you that the balance payable in respect of the said compromise is Rs.27.60crores (Rupees Twenty Seven crores and Sixty Lakh only) secured by mortgage of land and commercial building (basement plus five floor) in New No.79, Usman Road & No.19,20 part, Sarojini Street. T.Nagar, Chennai 600 017 in the name of M/s.Rathna Stores Pvt Ltd. You are aware that the said compromise proposal was valid up to 31.01.2017 and the above said amount payable by the company is subject to the approval of your request for extension of time by the competent authority and also subject to such other terms and conditions including additional interest that may be stipulated by the competent authority in this regard."

12. The Bank, in its letter, dated 27.03.2017, addressed to the petitioner and their partners, has stated that the compromise proposal has failed and stand withdrawn, as per the terms and conditions, set forth in the letter, dated 05.10.2016. The bank has further stated that for realizing the dues, the Bank has intented to sell the mortgaged properties, by E-Auction, after 30 days of notice, under the provisions of the SARFAESI Act, 2002. Accordingly, E-Auction notice, dated

29.03.2017, has been published in New Indian Express, fixing the auction date on 05.05.2017.

13. At this juncture, M/s.Rathna Stores, Represented by its Director, Mr.S.Sivasundar, S/o.P.S.Sivaperumal, has filed the instant writ petition, for a Mandamus, directing the UCO Bank to restore the OTS Proposal, dated 27.09.2016, vide letter Ref.ARSPL/UCO/OTS/2709, by granting them, further time of 6 months, for repayment of unpaid amount of Rs.27.60 Crores.

14. Record of proceedings shows that when the matter came up for hearing, on 27.04.2017, a Hon'ble Division Bench of this Court, has passed the following order:

> "2. In the meantime, subject to payment of Rs.25 crores, the property shall be allowed to operate by the petitioner. Till such payment is made, the petitioner is not allowed to make any transactions, regarding the property. It is made clear that, after the payment is made; the respondent bank shall take a lenient view in this matter. As per the SARFAESI Act, the respondent bank is required to issue sale certificate in favour of the auction purchaser as agreed between the parties."

15. Subsequently, taking note of the financial hardship expressed by the petitioner and oral submissions for extention of time, to comply with the order, dated 27.04.2017, a Hon'ble Division Bench, on 07.06.2017, has passed the following order,

> "3. In order to save the property from auction at the instance of the bank, when genuine and bona fide attempt has been made by the borrower to repay the remaining amount, instead of proceeding to allow the auctioning of property, we grant time to the borrower/petitioner for the remaining payment till 07.07.2017. Till then, the respondent Bank shall not take coercive steps.
>
> List on 12.07.2017 for compliance."

Thus, the present writ petition is listed under the caption, "For Compliance".

16. On this day, when the matter came up for further hearing, learned counsel appearing for the petitioner submitted that change of vakalat has been given and sought for time.

17. Per contra, inviting the attention of this Court to the proceedings instituted by the writ petitioner and the orders passed thereon, Mr.V.Suthakar, learned counsel appearing for the

respondent-bank submitted that when the mortgaged properties were brought for auction, writ petitions one after another, were filed and the action of the Bank to realise the outstanding dues, is scuttled. He further submitted that even the interim order, dated 27.04.2017, has not been complied with. According to him, there is no bona fide on the part of the writ petitioner. He submitted that the prayer sought for, is not maintainable.

18. From the material on record, it could be deduced that for releasing the property under mortgage, the petitioner has offered to make payment of Rs.53.60 Crores, on or before 31st January, 2017. The Bank has agreed for the proposal, subject to some conditions, which could be seen from the letter, dated 05.10.2016. The borrower has also paid a sum of Rs.26 Crores and got the property at Kenneth Lane, Egmore, released, but did not make the balance amount, as against the property at T.Nagar and Pondy Bazaar. Thereafter, the petitioner has requested the Bank to grant time, for payment of remaining amount, upto 30.06.2017.

19. As per the bank's letter, dated 27.03.2017, extracted supra, the compromise proposal has been treated as failed compromise and that the Bank, vide letter, dated 27.03.2017, has informed the borrowers that the properties at T.Nagar, Usman Road, would be brought for auction, after 30 days from 27.03.2017. Accordingly, E-Auction notice, dated 28.03.2017, has been issued, bringing the following the property, for auction on 05.05.2017,

> "(1) All the place and parcel of land measuring 3884 sq.ft., and building with Ground + 5 floors measuring 20304 Sq.Ft., in the name of M/s.P.S.Sivaperumal and Mrs.S.Periyaperatti, situated at T.S.No.7526 part, 7559, 7560, T.Nagar Village, Mambalam Ward, Guindy Taluk, Chennai South District, Door No.78, New No.91, Sir Thyagaraya Road, Chennai 600 017, as detailed below: For Doc.No.1425/73, bounded on the North by: Sir Thyagaraya Road, South by: Vendor's property, East by: D.No.77, West by: Shop No.2/78, For Doc.No.1426/73, bounded on the North by: Sir Thyagaraya Road, South by: Vendor's property, East by: Shop No.1/78, West by: Shop No.4/78, For Doc.No.3314/75, bounded on the North by: Shop No.1/78 & 7/78, South by: Deenadayalu St., East by: Shop No.78, West by: Shop No.15.
>
> (2) All the place and parcel of land measuring 8034 sq.ft., and commercial building with Ground + 5 floors totally measuring 30240 Sq.Ft., in the name of Rathna Stores Pvt. Ltd., situated at T.S.No.6044/1, 6063/1, 6064/1, T.Nagar Village, Mambalam Ward, Guindy Taluk, Chennai South District, New No.79, Usman Road &

No.19, 20 part of Sarojni Street, T.Nagar, Chennai 600 017, as detailed below: bounded on the North by: Sarojini Street, South by: OKJ Jewellers, East by: Land & Building, West by: Usman Road.

20. Instant writ petition has been filed on 19.04.2017, with a prayer for a Mandamus, directing the respondent bank to restore the OTS Proposal, dated 27.09.2016, vide letter Ref.ARSPL/UCO/OTS/2709, by granting further time of 6 months to the petitioner for repayment of unpaid amount of Rs.27.60 Crores. Despite indulgence granted by this Court on 27.04.2017 and 07.06.2017, no amount has been paid.

21. On the legal right of a person to seek for writ of mandamus, after considering a catena of decisions 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 judician 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."

22. Following the abovesaid decision, 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 Hon'ble 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".

23. At paragraph No.46, in M/s.Digivision Electronics' case (cited supra), 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 v. The District Collector, Coimbatore reported in 2005 WLR 47; Chandra Singh v. State of Rajasthan reported in JT 2003 (6) SC 20; The Managing Director, Tamil Nadu State Transport Corporation (Madurai Division-IV) Ltd., Dindigul v. P.Ellappan reported in 2005 (1) MLJ 639; Ramniklal N.Bhutta and Another v. State of Maharashtra reported in 1997 (1) SCC 134, etc."

24. Having failed to comply with the order of the DRT-II, Chennai, in S.A.No.24 of 2014, dated 05.11.2014 and also failed to represent either in person or through counsel, before the DRT-II, Chennai, which lead to the dismissal of S.A.No.24 of 2014 on 05.11.2014, for non-prosecution, the petitioner has filed W.P.No.33718 of 2015, directing the respondent-Bank not to take any further action, pursuant to the notice, under Rule 8(5) of the SARFAESI Rules, dated 14.09.2015, and that the same has been dismissed on 27.10.2015, taking note of the submission of the learned counsel appearing for the Bank that a fresh sale notice would be conducted.

25. In the present writ petition, the petitioner has sought for restoration of OTS proposal, dated 27.09.2016 and six months further time to repay Rs.27.60 Crores. That apart, this Court on 27.04.2017, has permitted payment to be made. Later on 07.06.2017, granted time till 07.07.2017, to make payment and directed the Registry to post the writ petition, under the caption, “For Compliance”. Despite indulgence by this Court, the interim orders have not been complied with.

26. On the aspect, as to whether, a borrower, who has obtained an interim order and failed to comply with the same, is entitled to be heard further, the Hon'ble Apex Court in Prestige Lights Ltd., v. State Bank of India reported in (2007) 8 SCC 449, at paragraph Nos.20, 22, 24 and 26, held as follows:

> "20. But, there is an additional factor also as to why we should not exercise discretionary and equitable jurisdiction in favour of the appellant. It is contended by the learned counsel for the respondent Bank that having obtained interim orer and benefit thereunder from this Court, the appellant Company has not paid even a pie. The appellant is thus in contempt of the said order. The Company has never challenged the condition as to payment of amount as directed by this Court. Thus, on the one hand, did not comply with

it and failed to pay instalments as directed. Neither it raised any grievance against the condition as to payment of instalments nor made any application to the Court for modification of the condition. It continued to enjoy the benefit of stay ignoring and defying the term as to payment of money. The Company is thus in contempt of the order of this Court, has impeded the course of justice and has no right of hearing till it has purged itself of the contempt.

22. From the above order, it is clear that notice was issued to the other side and stay granted earlier was ordered to continue on the appellant's depositing a sum of Rs.20 lakhs per month in this Court. It was also made clear that first of such payment should be made by 6.6.2015 and subsequent payments by 6th of each succeeding month. A default clause was also introduced in the order that if such payment would not be made, the stay would stand vacated. It is an admitted fact that the order has not been complied with and no payment as per the order has been made by the appellant company to the respondent bank. The said fact has also been reflected in the order of this court passed on 25-7-2007, wherein it was stated:

"It is recorded that the stay is transgressed by reason of the admitted non-compliance with the order dated 6-5-2005."

24. An order passed by a competent court-interim or final- has to be obeyed without any reservation. If such order is disobeyed or not complied with, the court may refuse the party violating such order to hear him on merits. We are not unmindful of the situation that refusal to hear himon the proceeding on merits is a "drastic step" and such a serious penalty should not be imposed on him except in grave and etraordinary situations, but sometimes such an action is needed in the larger interest of justice when a party obtaining interim relief intentionally and deliberately flouts such order by not abiding by the terms and conditions on which a relief is granted by the court in his favour.

26. That, however, does not mean that in each and every case in which a party has violated an interim order has no right to be heard at all. Nor will the court refuse to hear him in all circumstances. The normal rule is htat an application by a party will not be entertained until he has purged himself of the contempt. There are, however, certain exceptions to this rule. One of such exceptionsis that the party may appeal with a view to setting asie the order is alleged must be heard in support of the submission

that having regard to the meaning and intendment of the order which he is said to have disobeyed, his actions did not constitute a breach of it."

27. From the material on record, it could be seen that before the Tribunal in S.A.No.24 of 2014, the petitioner filed I.A.Nos.141 and 142 of 2014, for extension of time for payment and stay. Though time has been granted, balance amount has not been paid. Bank has also extended indulgence.

28. In the light of the discussion and decisions, we are of the view that the petitioner is not entitled to the prayer for a Mandamus, directing the respondent bank to restore the OTS Proposal, dated 27.09.2016, vide letter Ref.ARSPL/UCO/OTS/2709, by granting them further time of 6 months for repayment of unpaid amount of Rs.27.60 Crores.

29. Hence, the Writ Petition is dismissed. Consequently, interim order granted is vacated and connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

skm

To

The Chief Manager,
UCO Bank, MID Corporate Branch,
Burkit Road, T.Nagar,
Chennai 600 017.

+1cc to Mr.A.Umashankar, Advocate, S.R.No.48837
+1cc to Mr.V.Suthakar, Advocate, S.R.No.48475

W.P.No.10018 of 2017

AR(CS VI)
CS/08/08/17