IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/8/2017

C O R A M

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

Writ Petition No.9543 of 2014

S.Kousalya ... Petitioner

Vs

The Branch Manager
State Bank of India
Nellikuppam
Panruti Taluk
Cuddalore District. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondent for reschedule repayment of the loans obtained by the petitioner from the respondent under loan Nos.30221946408, 30223641030, 30582983731, 30788576718 and 3137524745.

For Petitioner ... Mr.R.Gururaj

For respondent ... No appearance

O R D E R

(Order of the Court is made by S.MANIKUMAR, J)

Borrower has sought for a writ of mandamus, directing the respondent, to reschedule repayment of the loans, obtained by the petitioner, from the respondent, under loan Nos.30221946408, 30223641030, 30582983731, 30788576718 and 3137534745.

2. Record of proceeding shows that on 11/6/2014, this Court has ordered as hereunder:-

> "Though the matter is posted today, learned counsel for the petitioner would submit that it will take some time to settle the matter and therefore, he prays for posting the above writ petition before the

Megal Lok Adalat which is scheduled to be held on 19/7/2014.

2. Registry is directed to do the needful immediately, by sending the aboe case to the Secretary, Legal Services Authority, for enabling them to send notice to the parties concerned, intimating the date on which the Mega Lok Adalat is scheduled to be held i.e., on 19/7/2014."

3. Thereafter, the matter has been placed before the Lok Adalat. On 25/9/2015, the Hon'ble Presiding Judge, has recorded as hereunder:-

"Even at the time of admission, the learned counsel for the petitioner wants time for settlement. But he has not approached the State Bank of India, Cuddalore.

Notice sent from Lok Adalat to the respondent, SBI, Cuddalore, for the hearing on 24/11/2014 has been served. Till now, they have not entered appearance and filed vakalat. Both parties and counsel for the petitioner also are absent for more than thirteen hearings.

Without presence of parties, question of settlement is remote. Hence, the case is referred back to Court."

4. After considering a catena of decisions, as to the legal right of a person to seek for a 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 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."

5. 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".

6. 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."

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

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

The Branch Manager
State Bank of India
Nellikuppam
Panruti Taluk
Cuddalore District.

+1cc to Mr.R.Gururaj, Advocate in sr.no.61559

W.P.No.9543 of 2014

RK(CO)
NR 20/09/2017