

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2017

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.30596 to 30599 of 2017

and

WMP Nos.33502 to 33505 of 2017

1. M/s.Green India Eco Products,
Rep. By its Proprietor,
Mr.T.Rajan ...Petitioner in W.P.No.30596 of 2017
2. M/s.MM Marketing,
Rep. By its Proprietor,
Mr.Veerasingam ...Petitioner in W.P.No.30597 of 2017
3. M/s.Master Mind Solutions,
Rep. By its Proprietrix
Mrs.Kavitha ...Petitioner in W.P.No.30598 of 2017
4. M/s.Jothi Media,
Rep. By its Proprietor,
Mr.N.Karthikeyan ... Petitioner in W.P.No.30599 of 2017

vs.

1. The Deputy General Manager,
Syndicate Bank,
No.194, T.V.Samy Road (West),
Regional Office,
R.S.Puram, Coimbatore - 641 002.
2. The Authorised Officer,
Syndicate Bank,
Regional Office,
No.194, T.V.Samy Road (West),
R.S.Puram, Coimbatore - 641 002. ... Respondents in all W.Ps.

W.P.No.30596 of 2017: WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing the respondents to permit the petitioner to remit the balance outstanding amount to the bank in 20 (Twenty) Equal and successive monthly installment and continue to keep up the regular installment payments as per the original loan schedule in respect of Loan Account No.61381400000421, 613879100000994, Pankaja Mills Road Branch.

W.P.No.30597 of 2017: WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing the respondents to permit the petitioner to remit the balance outstanding amount to the bank in 20 (Twenty) Equal and successive monthly installment and continue to keep up the regular installment payments as per the original loan schedule in respect of Loan Account No.6138101000528, Pankaja Mills Road Branch.

W.P.No.30598 of 2017: WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing the respondents to permit the petitioner to remit the balance outstanding amount to the bank in 20 (Twenty) Equal and successive monthly installment and continue to keep up the regular installment payments as per the original loan schedule in respect of Loan Account No.61381400000551, Pankaja Mills Road Branch.

W.P.No.30599 of 2017: WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing the respondents to permit the petitioner to remit the balance outstanding amount to the bank in 20 (Twenty) Equal and successive monthly installment and continue to keep up the regular installment payments as per the original loan schedule in respect of Loan Account No.6138140000474, Pankaja Mills Road Branch.

For Petitioner : Mr.S.P.Sudalaiyandi
in all W.Ps.

COMMON ORDER

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

For non payment of loan borrowed in four different accounts, Bank has declared the same as Non performing Assets. Though the petitioner sought for permission from the bank to pay the debt in 20 equal installments, the bank has rejected the request. Hence, the instant writ petitions for a direction to the respondents to permit the petitioners to remit the debt in installments.

2. Though, reliance has been made on the decision of the Hon'ble Division Bench of Kerala High Court in M/s.Sundaram BNP Paribas Home Finance Limited, Malappuram Vs. Nisha, reported in AIR 2016 Kerala 63, we are not inclined to accept the same for the reason that said judgment has been considered vis-a-vis 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, and Tamilnadu Industrial Investment Corporation Vs. Millenium Business Solutions Private Limited, reported in 2004 (5) CTC 689 and also a Hon'ble Division Bench judgment of this Court dated 10.01.2017 made in W.P.No.23708 of 2016.

3. In W.P.No.23708 of 2016, dated 10.01.2017, we have also considered the effect of the judgment of a co-ordinate bench. Paragraph Nos.3 to 9 of the judgment in W.P.No.23708 of 2016 dated 10.01.2017, is reproduced.

3. In M/s.Digivision Electronics Ltd., Registered Office at No.A5 & 6, Industrial Estate, Guindy, Chennai - 32 v. 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".

At paragraph No.46 of M/s.Digivision Electronics' case (cited supra), a 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.Nanjappa 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.Ellappa, 2005 (1) MLJ 639, Ramniklal N.Bhutta and Another Vs. State of Maharashtra, 1997 (1) SCC 134, etc."

4. Earlier, after considering a catena of decisions on 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. Therefore, as per the decisions of this Court in Tamilnadu Industrial Investment Corporation Vs. Millenium Business Solutions Private Limited, reported in 2004 (5) CTC 689 and 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, this Court cannot compel the bank for any rephasement or One Time Settlement. Decisions cited by us, decide the principles of law to be followed, in the matter of rephasement and settlement of dues. Needless to say that it is well settled that a decision on the point of law raised, argued and decided, is binding on the Co-ordinate Bench.

6. In Salmond's jurisprudence, 11th Edn. at page 199 to 217, it is stated as follows:

"(1) A decision ceases to be binding if a statute or statutory rule inconsistent with it is subsequently enacted, or if it is reversed or overruled by a higher court.

(2) A precedent is not binding if it was rendered in ignorance of a statute or a rule having the force of statute.

(3) A precedent loses its binding force if court that decided it overlooked an inconsistent decision of higher court.

(4) xx xx xx xx xx

(5) Precedents sub silentio are not regarded as authoritative. A decision passed sub silentio when the particular point of law involved in the decision is not perceived by the Court or present to its mind."

7. A Hon'ble Division Bench of Bombay High Court in CIT v. Thana Electricity Supply Ltd., reported in (1994) 206 ITR 727 (Bombay), held as follows:

#(a) The law declared by the Supreme Court being binding on all courts in India, the decisions of the Supreme Court are binding on all courts, except, however, the Supreme Court itself which is free to review the same and depart from its earlier opinion if the situation so warrants. What is binding is, of course, the ratio of the decision and not every expression found therein.

(b) The decisions of the High Court are binding on the subordinate courts and authorities or Tribunals under its superintendence throughout the territories in relation to which it exercises jurisdiction. It does not extend beyond its territorial jurisdiction.

(c) The position in regard to the binding nature of the decisions of a High Court on different Benches of the same court may be summed up as follows:

(i) A single judge of a High Court is bound by the decision of another single judge or a Division Bench of the same High Court. It would be judicial impropriety to ignore that decision. Judicial comity demands that a binding decision to which his attention had been drawn should neither be ignored nor overlooked. If he does not find himself in agreement with the same, the proper procedure is to refer the binding decision and direct the papers to be placed before the Chief Justice to enable him to constitute a larger Bench to examine the question (see Food Corporation of India v. Yadav Engineer and Contractor AIR 1982 SC 1302).

(ii) A Division Bench of a High Court should follow the decision of another Division Bench of equal strength or a Full Bench of the same High Court. If one Division Bench differs from another Division Bench of the same High

Court, it should refer the case to a larger Bench.

(iii) Where there are conflicting decisions of courts of co-ordinate jurisdiction, the later decision is to be preferred if reached after full consideration of the earlier decisions.

(d) The decision of one High Court is neither binding precedent for another High Court nor for courts or Tribunals outside its own territorial jurisdiction. It is well settled that the decision of a High Court will have the force of binding precedent only in the State or territories on which the court has jurisdiction. In other States or outside the territorial jurisdiction of that High Court it may, at best, have only persuasive effect.#

8. In *Raman Gopi v. Kunju Raman Uthaman* reported in 2011 (4) KLT 458, a Full Bench of the Kerala High Court held that when a Bench of higher number of judges of the concerned court decided a question on the subject, then that is binding on the Bench of co-equal judges or lesser number of judges of that court. Further, it is settled law that, if a decision has been rendered by the same High Court, then any decision rendered by any other High Court is not binding on the other High Court but it has got only persuasive value.

9. We deem it to follow the decision in *M/s. Digivision Electronics Ltd., Registered Office at No. A5 & 6, Industrial Estate, Guindy, Chennai - 32 v. Indian Bank, rep. by its Deputy General Manager, Head Office, 31, Rajaji Salai, Chennai-1* and another, reported in 2005 (3) LW 269."

4. Though, Mr. S.P. Sudalaiyandi, learned counsel for the petitioners submitted that as against the decision in W.P.No.23708 of 2016 dated 10.01.2017, SLP has been filed before the Hon'ble Supreme Court and prayed for admission of the instant writ petitions, we are not inclined to entertain the writ petitions. In SLP (C) No.7624 of 20017 dated 03.04.2017, the Hon'ble Supreme Court while issuing notice, has ordered status quo with regard to the possession of the property in question. No directions have been issued permitting the appellants therein to pay the debt in installments.

5. In the light of the above discussion, instant writ petitions, are dismissed. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy General Manager,
Syndicate Bank,
No.194, T.V.Samy Road (West),
Regional Office,
R.S.Puram, Coimbatore - 641 002.

2. The Authorised Officer,
Syndicate Bank,
Regional Office,
No.194, T.V.Samy Road (West),
R.S.Puram, Coimbatore - 641 002.

+1 cc to M/s.S.P.Sudalaiyandi Advocate sr 84619

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