

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.31076 of 2014

and

M.P.No.1 of 2014

P.Gandhi

.... Petitioner

versus

The Authorised Officer
State Bank of India
Nellikuppam Branch
Panruti Taluk
Cuddalore District

.... Respondent

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondent to reschedule the loans obtained by the petitioner under CIF/Account Number:30547870173 and Term Loan No.30410325408.

For Petitioner : Mr.R.Gururaj

ORDER

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

Writ petition is filed seeking for a direction to the respondent bank to consider and dispose of the petitioner's request to reschedule the loans obtained by the petitioner under CIF/Account Number:30547870173 and Term Loan No.30410325408.

2. Short facts leading to the filing of the writ petition are that the petitioner, borrowed a sum of Rs.2,30,000/- from the respondent bank on 24.06.2008 for repair and modification of his house. Petitioner's wife stood as guarantor for the loan and she has offered her property as security. Petitioner's wife has 18 accounts with the respondent bank. Brother of the petitioner has also borrowed agricultural loan from respondent bank. Due to Thane Cyclone, crops got damaged and he could not raise funds to pay the loan. Further he met with an accident which resulted in

fracture of his leg. However, on 11.06.2011, he paid Rs.68,157/- towards the loan, by way of adjustment from the account of his brother.

3. Material on record further discloses that the respondent bank issued a demand notice dated 18.10.2011 under Section 13(2) of the SARFAESI Act, 2002. Since the petitioner did not respond to the notice, respondent bank issued possession notice dated 24.02.2012 under Section 13(4) of the Act. Material on record further discloses that thereafter, on 29.02.2012, the petitioner paid a sum of Rs.50,000/- and on 10.03.2012, the petitioner paid another sum of Rs.30,000/-. Petitioner further states that he has paid more than half of the loan amount. Petitioner further states that since he is an agriculturist, he could pay only after every harvest. In view of the above, the petitioner has made a request to the respondent bank for rescheduling of loan amount.

4. On 27.11.2014, this court ordered notice of motion returnable in one week and permitted the learned counsel for the petitioner to take notice privately.

5. Though the learned counsel for the petitioner submitted that more than half of the loan amount has already been paid and that the petitioner is only seeking a direction to the respondent bank for rescheduling with regard to payment of the balance amount, we are not inclined to accept the said contention in the light of a Hon'ble Division Bench judgment 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, the 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".

6. 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."

7. 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."

8. 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., 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, Court cannot compel the bank for rescheduling or one time settlement. Decisions stated supra are proximate to the principles of law to be followed in the matter of rescheduling and settlement of dues. It is well settled that a decision on the point of law raised, argued and decided is binding on the Co-ordinate Bench.

9. In the light of the above discussion and decisions, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

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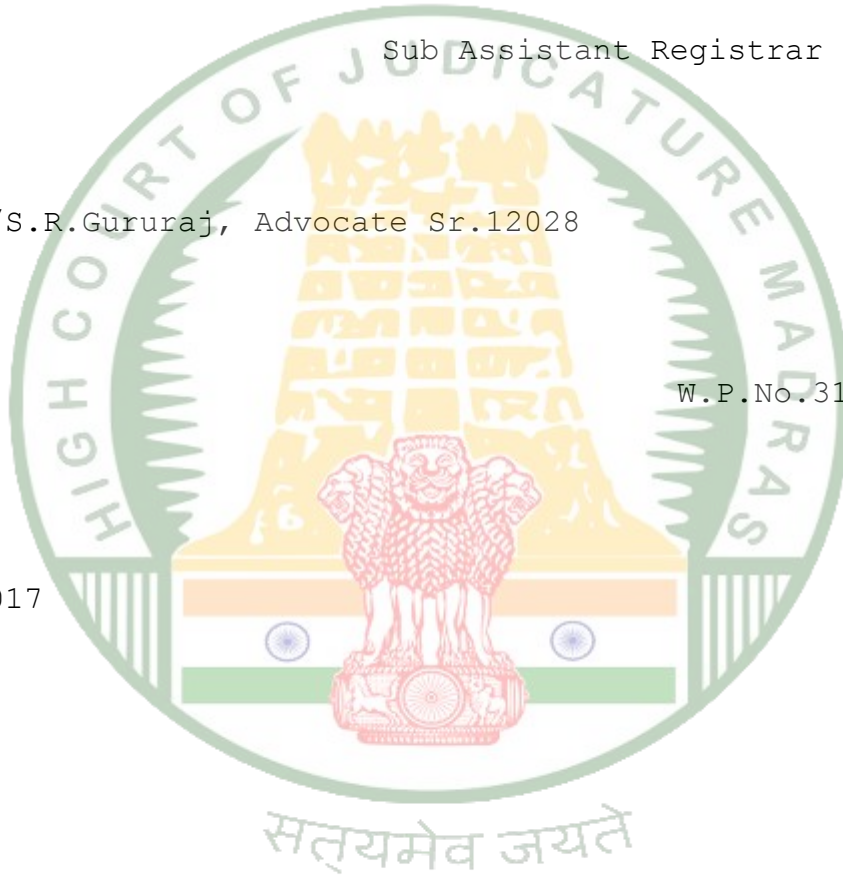
Sub Assistant Registrar

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+1cc to M/S.R.Gururaj, Advocate Sr.12028

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