IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 7/7/2017

C O R A M

The Honourable Mr.JUSTICE S. MANIKUMAR
and
The Honourable Mrs.JUSTICE V. BHAVANI SUBBAROYAN

W.P.No.14511 of 2017

M. Charles ... Petitioner

Vs

The Authorised Officer
Asset Reconstruction Company (India) Ltd
ARMS - A Division of ARCIL
Office No.715 - C, 7th Floor
Spencer's Plaza - Phase II
769 Anna Salai
Chennai 600 002. ... Respondents

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of mandamus to direct the respondent to consider the petitioner's representation dated 20/3/2017 and direct the respondent to settle the loan amount for a sum of Rs.5,00,000/- and issue a confirmation for the same, within a reasonable period.

For Petitioner : Mr.P.Sam Japa Singh
For Respondent : Mr.K.Shankar

O R D E R

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

Material on record discloses that the petitioner has availed loan from the Bank for Rs.4,46,670/-, by way of three cheques, bearing Nos.282208, 799359 and 035023, dated 11/4/2003, 31/5/2003 and 11/7/2003, respectively.

2. According to the petitioner, he has paid a sum of Rs.3 lakhs and that there was a balance of Rs.1,46,670/-. Averments in the supporting affidavit shows that the authorised officer of Asset Reconstruction Company (India) Limited, has issued a notice under Section 13 (2) of the SARFAESI Act, demanding the borrower to pay a sum of Rs.9,21,478.63, along with future interest and charges, failing which Asset Reconstruction Company

(India) Ltd., would be constrained to exercise the right, as per sub-Section (4) 13 of the SARFAESI Act, 2002. Thereafter, possession notice, under Section 13 (4) of the Act, dated 16/10/2010, has been issued, calling upon the borrower to pay the said sum.

3. Typed set of papers filed by the respondent shows that on 23/9/2013, the borrower has written a letter to the Manager, ARCIL, Chennai. Subsequently, by accepting the One Time Settlement proposal, Asset Reconstruction Co (India) Ltd., has sent a letter, dated 23/12/2013, to the borrower as hereunder:-

> "This is to inform you that as on 6/12/2013, the total outstanding under your Loan Account is Rs.20,31,599/-. Upon consideration of your proposal, the competent authority of Arcil has agreed to accept a total amount of Rs.8,75,000/- (Rupees Eight lakhs Seventy Five thousand only) payable in the manner indicated below, towards full and final settlement of the captioned loan account.
>
> Scheduled of payment will be as under:-
> By on or before 30th December 2013 - Rs.8,75,000/-
>
> The payment must be made in favour of ARCIL RETAIL LOAN PORTFOLIO 001-A-TRUST. During settlement period, 15.75% interest will be applicable on reducing balance basis. Failure of making full payment, or payment of any installment, or any part thereof, within the due dates, as per the schedule mentioned above, will result in automatic cancellation of this settlement and the payments made by you will be apportioned as a normal payment towards total outstanding indicated above together with all interest and applicable charges, in accordance with the terms and conditions of the prevailing Loan Agreement. This settlement letter is being issued without prejudice to out rights and interests as may be available under law."

4. Subsequently, the petitioner through his lawyer, has sent a letter, dated 11/2/2017, stating that a sum of Rs.5 lakhs, to be paid, as one time settlement, the petitioner has further submitted that a Demand Draft for Rs.2,00,000/- (Rupees Two lakhs only), dated 15/10/2016, has been sent.

5. When the further representation, dated 20/3/2017, sent to the respondent, has not been responded, the borrower/petitioner, has sought for a writ of mandamus, directing the respondent to consider the representation dated 20/3/2017, and settle the loan for Rs.5 lakhs and issue a confirmation for the same.

6. On 4/7/2017, when the matter came up for hearing, we directed Mr.K.Shankar, learned counsel for the first respondent, to ascertain as to whether Bank is willing for any settlement.

7. Reverting, he submitted that though the outstanding amount due and payable by the writ petitioner would be more than Rs.20 lakhs. Bank is willing to settle the loan account, provided, the petitioner pays Rs.20 lakhs as full quit.

8. Submission of the learned counsel appearing for the first respondent is placed on record.

9. Heard the learned counsel for the parties and perused the materials available on record.

10. 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, wherein at paragraph No.42, a Hon'ble Division Bench 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".

11. 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."

12. Earlier, after considering a catena of decisions on the legal right of a person to seek for 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."

13. Even, as per the letter dated 23/9/2013, addressed by the writ petitioner to the Manager, ARSIL, Chennai, he was aware that as per the accounts of the Bank, a sum of Rs.19 lakhs was due,. Expressing difficulty, he has offered, to pay Rs.10 lakhs, within a period of one month, from the said letter. He has requested the Manager, to obtain necessary orders. Thereafter, he has sent a proposal, for final settlement of ICICI Home Loan.

14. Perusal of the letter, dated 23rd December 2013 of the authorised signatory, Asset Reconstruction Company (India) Ltd., shows that as on 6/12/2013, the total outstanding amount, as per the Bank in the loan account was Rs.20,31,599/-. ARCIL has agreed to accept the total payment of Rs.8,75,000/-, on or before 30th December 2013.

15. Having acknowledged, the said letter and enclosed the same in the typed set of papers, filed along with writ petition, petitioner is feigning ignorance of the outstanding amount due and payable to the first respondent Company and prayed for a mandamus to consider the representation, dated 20/3/2017 and settle the loan for Rs.5 lakhs.

16. In the light of the decisions stated supra, Courts cannot issue writ of mandamus, directing the respondents, to settle loan amount for a sum of Rs.5 lakhs, as prayed for.

17. Accordingly, this writ petition is dismissed. No costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

mvs.

To

+1cc to Mr.K.Shankar, Advocate Sr.47934
+1cc to Mr.P.Sam Japa Singh, Advocate Sr. 47368

W.P.No.14511 of 2017

AR(IV)
VR(21/07/2017)