IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.02.2017

C O R A M

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

Writ Petition No.25454 of 2015

Mr.T.S.Ramachandran ... Petitioner

Vs

1. The Registrar
The Debts Recovery Appellate Tribunal
Chennai.

2. The Presiding Officer
The Debts Recovery Tribunal
Coimbatore.

3. Punjab National Bank
(Formerly Nedungadi Bank Ltd)
rep. By its Branch Manager
No.33 Sabari Street
Tiruppur 641 601. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records relating to proceedings in order dated 15/4/2015 passed in M.A.No.68 of 2011 on the file of the first respondent herein and quash the same.

For petitioner ... Mr.K.Banupriya

For 3rd respondent ... Mr.M.L.Ganesh

O R D E R
(Order of the Court was made by S.Manikumar,J)

This writ petition has been filed praying to quash the order, dated 15/4/2015, passed in M.A.No.68 of 2011, on the file of the first respondent herein.

2. The Petitioner is the sole proprietor of M/s.Shankar Knitting Mills, Tiruppur. He was also a guarantor to a partnership concern, viz., Suba Export. A claim in O.A.No.173 of 2002 was laid by the Punjab National Bank, Tiruppur, before the Debts Recovery Tribunal, Coimbatore, for recovery of a sum of Rs.17,69,011/-. Subsequently, OTS scheme was floated by the Reserve Bank of India. As the petitioner was covered by the OTS scheme, he was invited for recovery camp held on 18.08.2003. Through negotiations, the petitioner agreed to pay Rs.14,00,000/- towards full and final settlement. As per RBI guidelines, in respect of assets classified as doubtful or loss, as on 31st March 2000, the one time settlement amount shall be 100% of the amount outstanding as on the date on which the amount was categorised as NPA. Therefore, the petitioner is liable to pay only Rs.5,89,781/- + Rs.4,47,810/- = Rs.10,37,591/-, but the third respondent-Bank had collected an excess amount of Rs.4,62,409/-. Hence, the petitioner filed an application in I.A.No.363 of 2004 in O.A.No.173 of 2002 before the Debts Recovery Tribunal, Coimbatore, for refund of the balance and the same was dismissed on 24.11.2010.

3. Aggrieved against the said order, the petitioner filed an appeal before the Debts Recovery Appellate Tribunal, Chennai and the same was also rejected on 15.04.2015, on the ground that when certain amounts are due from the borrower to the bank and under the OTS scheme, the borrower paid money, which is less than the actual amount due, he cannot later claim that under Circulars, he is entitled to pay a lesser amount and that he should therefore, be refunded the excess amount paid by him over and above the amount covered by the Circulars. Being aggrieved, the petitioner has filed the instant writ petition.

4. However, at a later point of time, the petitioner has filed W.M.P.No.1948 of 2017 in W.P.No.25454 of 2015, seeking permission to carry out the amendment in the prayer to issue an order in the nature of Writ of Certiorarified Mandamus, to call for the records relating to proceedings in order dated 15.04.2015 passed in M.A.No.68 of 2011 on the file of the first respondent herein, quash the same and consequently, direct the 3rd respondent to refund the amount paid in excess in one time settlement, instead of the prayer for Writ of Certiorari.

5. The third respondent Bank has filed a counter affidavit, stating that the petitioner, sole proprietor of M/s.Shankar Knitting Mills and guarantor of M/s.Subha

Exports, had sought for one time settlement, with the bank and accordingly, attended the OTS camp held on 18.08.2003, wherein, he had undertaken to discharge a sum of Rs.16 lakhs, as combined OTS amount in the following manner:

(i) Rs.1,00,000/- to be paid immediately;

(ii) Rs.3,90,000/- on or before 15.09.2003;

(iii) Balance amount of Rs.12,00,000/- within three months.

6. The third respondent has further submitted that in terms of aforesaid OTS offer, the petitioner has not complied with the said conditions and consequently, the Bank is entitled for the entire claim amount. The Bank has already filed O.A.No.173 of 2002, before the Debts Recovery Tribunal, Coimbatore, against M/s.Shankar Knitting Mills for a recovery of a sum of Rs.17,69,011/-, as on 04.08.2002 together with future interest and costs. The petitioner again sent a letter on 04.02.2002, requesting for revising the OTS amount to Rs.15 Lakhs from Rs.16 Lakhs, as originally agreed. As a special case, the respondent-Bank revised the OTS to Rs.15 Lakhs and accordingly, the petitioner had remitted the same on 05.08.2004, which included the margin money. Subsequent to the aforesaid payment, the abovesaid Original Application was withdrawn on 17.08.2004, by the Bank.

7. The third respondent-Bank has further submitted that the petitioner filed an application in I.A.No.343 of 2004, alleging that the bank had collected excess amount in violation of RBI guidelines. Since the petitioner had not prosecuted the said application, it was dismissed for default. The petitioner again filed two applications in I.A.Nos.706 and 707 of 2006 for restoring I.A.No.343 of 2004, which was also dismissed for default. Thereafter, the petitioner again filed an application in I.A.No.1655 of 2007, to restore the dismissal order passed in I.A.Nos.706 and 707 of 2006. After hearing the submissions made on either side, the Debts Recovery Tribunal dismissed the same on 18.09.2007.

8. The third respondent has further contended that the petitioner filed an appeal in M.A.No.62 of 2010, before the Debts Recovery Appellate Tribunal, Chennai and I.A.No.363 of 2004 was restored, with a direction to the Presiding Officer, Debts Recovery Tribunal, Coimbatore, to dispose of the said I.A., within one month. After considering the submissions, the Presiding Officer had dismissed I.A.No.363 of 2004 on 24.11.2010, against which, M.A.No.68 of 2011, was filed before the Debts Recovery Appellate Tribunal, Chennai, which dismissed on 15.04.2015.

9. The third respondent-Bank has further contended that the RBI has issued guidelines, instructing the Banks that the minimum amount recovered should be 100% of the outstanding balance in the account from the borrower, if the recovery of the loan amount is doubtful or loss and the banks have to ensure the recovery of the maximum amount possible in each account and that the OTS offer is purely the discretion of the authorities and cannot be claimed as a right.

10. It is further submitted that the petitioner has misinterpreted the RBI guidelines, which stipulates that while giving OTS offer, the Bank has to recover the minimum amount and it does not preclude the bank from getting the maximum amount which is a public money. This Court, repeatedly observed that Bank cannot be compelled to make compromise under RBI guidelines, since it involves an agreement between the parties. Hence, the third respondent-Bank has prayed for dismissal of the writ petition.

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

11. In M/s.Digivision Electronics Ltd., Retistered 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.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 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."

13. 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 Electonics 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, 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.

14. Counter affidavit of the bank shows that the petitioner has indulged in proscrating the proceedings and recovery.

15. In the light of the above decisions, the writ petition is dismissed. No costs. Consequently, the prayer for amendment cannot be granted and hence, dismissed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

skm/asr

1. The Registrar
   The Debts Recovery Appellate Tribunal
   Chennai.

2. The Presiding Officer
   The Debts Recovery Tribunal
   Coimbatore.

A.SK(07/06/2019)