IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12/10/2017

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MRS.JUSTICE R.SURESH KUMAR

Writ Petition No.26664 of 2017

M/s. Sri Sankara Fab
rep. by its Partner
V.N.Ranganathan
Vellore District 632 513. ... Petitioner

Vs

1. The Regional Manager
Indian Overseas Bank
Vellore Region
Vellore.

2. The Branch Manager
Indian Overseas Bank
Ranipet
Vellore District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of mandamus to direct the respondents to pass appropriate orders on the petitioner's request letter, dated 12/5/2017 and the further communication of the second respondent to first respondent dated 15/5/2017 relating to the offer of One Time Settlement in respect of loan account No.00700326100011 of the petitioner Company availed with the second respondent within a stipulated time.

For Petitioner ... Mr.C.Prabakaran

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O R D E R

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

Borrower, who is unable to pay the instalments, due to the death of his son, and ailment suffered by his wife, has made a representation, dated 12/5/2017, to the Manager, Indian Overseas Bank, Ranipet, to adjust interest, towards payment of the debt amount.

2. Responding to the above, Senior Manager, Indian Overseas Bank, Ranipet Branch has sent a letter, dated 15/5/2017, which reads as follows:-

> "We have received request letter from the above party relatives Anjana Ranganathan, No.3 Sarvananagar, Annaikat Road, Walajah, Vellore District 632 513. The sankara fabrication availed term loan on 10/7/2010 for Rs.15.00 lakhs between 2013, they have paid 16,02,640/-. The present outstanding nearly 8 lakhs. Due to road accident, the original borrower Mr.Saravanan expired on 27/3/2014. Further the unit is not functioning and his mother Smt.Anjala Ranganathan given request letter for interest waiver for the entire outstanding 8.00 lakhs, regarding this they have sent to CM wing and regional office they have came along with lawyer and discussed the matter with SRM. The account is not showing NPA since 3 years they are not paying and they are paid at a time 12 lakhs the account became regular, if possible kindly consider under OTS what are the possible amount they have to settle within the stipulated time and advise the same."

3. Contending inter alia that due to the above said reasons, repayment could not be made, interest and penal interest have caused hardship, petitioner has sought for a mandamus, directing the respondents, to consider his request letter, dated 12/5/2017, and to offer One Time Settlement, in respect of the loan account No.00700326100011, within the stipulated time.

4. We have heard Mr.C.Prabakaran, learned counsel for the petitioner and perused the materials available on record.

5. Though the petitioner has suffered hardship, due to the sudden demise of his son and ailing wife, this Court, cannot issue a mandamus, directing the Bank, to enter into One Time Settlement. In this context, we deem it fit to consider the following decisions.

6. 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."

7. 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 Nos.42 and 46, 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.

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."

8. Decisions stated supra are proximate to the principles of law, to be followed in the matter of rephasement and settlement of dues. In the light of the above discussions and decisions, the writ petition is dismissed. It is open to the Bank to consider the request, if permissible. No costs. Consequently, the connected Miscellaneous Petition is closed.

mvs.

sd/
ASSISTANT REGISTRAR

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

To

1. The Regional Manager
Indian Overseas Bank
Vellore Region
Vellore.

2. The Branch Manager
Indian Overseas Bank
Ranipet
Vellore District.

+1CC to MR.C.PRABAKARAN Advocate SR.NO.73545

W.P.No.26664 of 2017

RSY[CO]
MK:13/11/2017