IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE Tmt.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.16760 of 2017
and
W.M.P.Nos.18199 & 18200 of 2017

S.Venkataramanan .. Petitioner

versus

Indian Bank
Represented by its Chief Manager
793, Jawaharlal Nehru Street
Villupuram - 605 602 .. Respondent

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the communication dated 31.03.2017 issued by the respondent and to quash the same and consequently direct the respondent to extend the time prescribed for complying with the OTS terms dated 05.12.2016 by four weeks or any other time frame that may be fixed by this Hon'ble Court.

For Petitioner : Mr.R.Sugumaran
(No Apparance)

For Respondent : Mrs.S.R.Sumathy

ORDER

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

Impugned communication of the respondent-bank, dated 31.03.2017, is extracted here under:

"31.03.2017

M/s.Frontier Techno Products (P) Ltd.,
Plot No.9, Secretariat Colony, II Floor,
Lakshmipuram,
Chennai 600 009

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Kind Attn: Mr.S.Venkataramanan - Director
Mrs.Kavitha - Mortgagor

Dear Sir/Madam,

Sub: One Time Settlement (OTS) offer made to you for your OD and term loan accounts with our branch

Ref: Our letter of intimation of OTS dated 05.12.2016 Telephonic talk had with you to settle dues on different dates

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Please refer to our above OTS offer, letter, terms and conditions therein. In respect of the OTS, we draw your attention with regard to the time stipulation for payment of OTS which has been mentioned as 60 days, but the same has not been complied with.

Since the specified time limit has already elapsed, we are to inform you that the sanctioned OTS is NOT VALID any more and we are left with no option than proceeding under SARFAESI Act, 2002 and other legal measures as deemed fit.

Hence, you are hereby called upon to pay the total outstanding dues of Rs.92.72 laksh (as on 30.03.2017). Needless to mention that this letter is without prejudice to any other remedy available to the Bank.

Yours faithfully,

Branch Manager"

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2. Petitioner/borrower, has sought for a Writ of Certiorarified Mandamus, to call for the records pertaining to the communication dated 31.03.2017, issued by the respondent, quash the same and consequently prayed for a direction to the respondent to extend the time prescribed for complying with the OTS terms dated 05.12.2016 by four weeks or any other time frame that may be fixed by this court.

3. No representation for the petitioner. However, Mrs.S.R.Sumathy, learned counsel for the respondent/bank,

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submitted that the subject property has been auctioned on 06.06.2017, auction was confirmed on 12.06.2017 and consequently, on 19.07.2017, a Sale Certificate has been issued to the successful bidder.

4. A Hon'ble Division Bench of this Court 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, at paragraph No.42, 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".

5. 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."

6. 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:

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"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.

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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. 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, Court cannot compel the bank for rescheduling of one time settlement. Decisions stated supra, on 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. That apart, the subject property has been auctioned on 06.06.2017 and that, after confirmation of sale on 12.06.2017, sale certificate has been issued on 19.07.2017. Taking note of the subject, events, and the decisions of this court, the writ petition is dismissed. No costs. Consequently, the connected writ miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

asr

+ 1 cc to M/s.S.R.Sumathy, Advocate,SR.55912

+ 1 cc to M/s.A.V.Arun, Advocate,SR.56063

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SJ(CO)
NR 09/08/2017

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