IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/10/2017

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.27153 of 2017

1. M/s. Spice Texti
   rep. By its Proprietor
   Shri C.P.Radhakrishnan
   9/5 Pettichettipuram
   Tirupur 641 601.

2. Sri.C.P.Radhakrishnan ... Petitioners

Vs

1. State Bank of India
   Stressed Assets Management Branch
   rep. By its Assistant General Manager
   No.32 Montieth Road
   Red Cross Buildings
   Egmore
   Chennai 600 008.

2. Asset Reconstruction Company India Ltd
   715-C, 7th Floor, Spencer's Plaza Phase II
   769 Anna Salai
   Chennai 600 002.

3. The Registrar
   Debts Recovery Tribunal
   Coimbatore. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of mandamus to direct the second respondent to issue no due certificate to the petitioners on the loan which is subject matter of O.A.No.58 of 2010 on the file of DRT, Coimbatore, on payment of Rs.1,49,47,988/- with simple interest at 9% p.a., from 6/1/2012 till date of repayment permitting the petitioners to pay the said amounts in instalments or on payment of Rs.2,00,00,000/- in one lumpsum and within a time frame as may be fixed by this Court.

For petitioners ... Mr.Silambanan
Senior Counsel
for Ms.Kaavya Silambanan Associates

\- - - - - -

O R D E R

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

M/s.Spice Texti, Tirupur/first petitioner has availed loan of Rs.2 crores, on 27/12/2007, from State Bank of India, Chennai. Mr.C.P.Radhakrishnan/second petitioner offered personal security of land and building for the loan availed. According to the petitioners, they were prompt in repayment and paid 87.5% of the sanctioned amount to the Bank. However, due to reasons beyond control of the petitioners, economic recession and for other reasons, instalments could not be paid in time.

2. Bank has declared the account as Non-performing Asset, on 30/9/2009 and charged interest upto 30/10/2009, at the rate of 13.75% p.a., with monthly rests. Bank has also filed O.A.No.58 of 2010, for recovery of Rs.2,74,83,912/-, with interest as on 30/9/2009. According to the petitioners, during the pendency of proceedings, they have paid a sum of Rs.50 lakhs, on 14/10/2010. Bank has also accepted One Time Settlement, for compromise of a sum of Rs.258 lakhs. O.A.No.58 of 2010 was disposed of, on 6/1/2012, directing the petitioners to pay a sum of Rs.3,01,58,498.78/-, as on 14/6/2010, with interest thereon.

3. Petitioners have further submitted that State Bank of India, Chennai, assigned liability to Asset Reconstruction Company India Limited/second respondent. The said Company is now claiming a sum of Rs.6,02,26,885/-

4. On the above averments, writ petitioners have sought for a writ of mandamus, directing the Asset Reconstruction Company India Ltd., Chennai/second respondent, to issue no due certificate to the petitioners on the loan, which is subject matter of O.A.No.58 of 2010, on the file of Debt Recovery Tribunal, Coimbatore, on payment of Rs.1,49,47,988/-, with simple interest at 9% p.a., from 6/1/2012, till date of repayment, permitting the petitioners to pay the said amounts in instalments or on payment of Rs.2,00,00,000/-, in one lumpsum.

5. Supporting the prayer sought for, Mr.Silambanan, learned Senior Counsel submitted that Asset Reconstruction Company India Ltd., Chennai/second respondent has charged exorbitant amount towards interest and failed to take into consideration the

proposals and payments made against OTS. He further submitted that the petitioner is willing to pay a sum of Rs.2 crores, to the Asset Reconstruction Company India Ltd., Chennai/second respondent. But the said Company is not willing to accept the said payment. During the course of hearing, learned Senior Counsel also produced a Demand Draft for the said value.

6. Heard the learned Senior Counsel for the petitioners and perused the materials available on record.

7. Loan availed has not been disputed. Payments are stated to have been made. OTS has been sanctioned. On 4/5/2011, State Bank of India has cancelled the OTS and communicated the same, as hereunder:-

> "Please refer to your letter dated 29/4/2011 on the captioned subject. Your request for extension of time has already been rejected by the Bank vide our letter No.SAMB/AS/202 dated 27/4/2011. In this connection, we also advise you that as the OTS amount along with interest has ot been paid before 31/3/2001 as per the terms and conditions of the OTS offer, the OTS has been cancelled.
>
> 2. Please arrange to pay the entire dues with interest and other charges immediately failing which the bank will be constrained to proceed with SARFAESI Act and other legal action as deemed necessary, without further notice."

8. Thereafter, sale-cum-tender notice has been issued. Request for extension of time, upto 31/12/2011, for paying the balance amount, with interest, has been rejected by the State Bank of India, on 15/7/2011, and accordingly, communicated, as hereunder:-

> "With reference to your letter, dated 13/7/2011 on the captioned subject, we advise that your request for extension of time upto 31/12/2011 for paying the balance OTS amount with interest cannot be acceded to as the OTS was cancelled by the Bank vide our letter No.SAMB/AS/264 dated 4/5/2011. Hence we advise that your request for extension of time is rejected.
>
> 2. As you have neither honoured your commitment to settle the dues as per OTS terms nor paid any installment towards the balance OTS amount of Rs.2.08 Cr (except

Rs.0.05 Cr) since approval of OTS on 15/11/2010, the Bank is constrained to proceed with the sale of properties as already advised.

3. This letter is issued without prejudice to the Bank's right to proceed further legal action including under the SARFAESI Act as it deemed necessary to recover the Bank's dues.”

9. Consequently, Bank has issued a letter, dated 23/11/2011, demanding payment, failing which action would be taken under the provisions of the SARFAESI Act, 2002.

“Please refer to your letter dated 13/7/2011 on the captioned subject. As per your request, the time for payment of balance OTS amount with interest has been extended upto 31/12/2011. You have also filed a Joint Memo before DRT, Coimbatore for obtaining a consent decree in the event of non-payment before the said date. We regret that you have not made any further payment and the last date for payment is fast approaching.

2. In view of the above, we request you to make necessary arrangements for repaying the balance OTS amount with interest before 31/12/2011 failing which the Bank will be constrained to proceed further with legal action, by invoking the consent decree, including under the SARFAESI Act to recover the dues.”

10. Reminder, dated 13/12/2011, on settlement of accounts, issued by the Bank is extracted, as follows:-

“Please refer to your letter, dated 8/12/2011 on the captioned subject. At the outset, we advise you that we have not received any letter from you requesting your calculation of interest upto 30/11/2011.

2. In this connection, we advise that the interest payable on the balance OTS amount of Rs.2.03 crores, as on 31/12/2011 is Rs.31,98,434/-. Please arrange to pay the aforesaid amount on or before 31/12/2011 as per the agreed terms of OTS. Please also note that further extension of time will not be given and in case of non-payment, the Bank will be constrained to proceed with legal action including under the SARFAESI Act.

3. This letter is issued without

prejudice to the Bank's right to proceed further with the legal action including under the SARFAESI Act, as it deemed necessary to recover the Bank's Due.

4. Please treat the matter as MOST URGENT."

11. Subsequently, State Bank of India, has again considered the offer OTS scheme and accordingly, sent a letter, dated 7/5/2012, to M/s. Spice Texti, Tirupur, which reads as hereunder:-

State Bank of India has recently come out with a scheme for One Time Settlement (OTS) of non-performing assets in MSME sector. In this connection, we would like to advise you that your dues to the Bank are eligible for settlement under the SBI OTS-MSME 2012 on the following terms and conditions:

(i).	Amount outstanding on the date of NPA	...	1/8/2009
	Amount	...	Rs.2,73,15,000/-
(ii).	Amount of OTS	...	Rs.2,85,14,386/-

(Calculated as per the formula given in the scheme)

(iii). Application for OTS will be processed on deposit of minimum 5% of the outstanding as on the date of NPA.

(iv). 25% of the OTS amount will have to be deposited by you upfront on receipt of the letter from the Bank advising approval for the OTS. This would include the amount deposited by you along with the application.

(v). The balance amount can be paid within 12 months from the date of sanction of OTS (the validity period) together with interest at the documented rate/PLR-2%/Base rate, whichever is lower, failing which the OTS sanction will be rendered infructuous.

(vi). However, no interest will be charged after the date of crystallisation, if the entire OTS is paid within six months from the date of sanction.

(vii). You will be eligible for an incentive of 15% or 10% discount on the OTS amount, on making payment of the entire OTS amount within one month or three months of approval of the OTS respectively.

Since your case is decreed/pending before

Court/Lok Adalat/DRT/DRAT/BIFR, any settlement will be subject to consent/consent decree/necessary orders from the Court/Lok Adalat/DRT/DRAT/BIFR and this letter is issued without prejudice to the rights and contentions of the Bank in the said proceedings.

Since you have been issued notice under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, this notice is without any prejudice to our rights to take/continue actions under the Act unless a compromise is settled under the present SBI OTS-MSME, 2012 Scheme as stated above.

3. Your request for settlement will be processed for acceptance or otherwise on receipt of your communication and deposit of minimum 5% of the outstanding as on the date of NPA. Please submit your application for OTS under the SBI OTS-MSME 2012 scheme on or before 31/7/2012 (the last date of submission as provided in the scheme)."

12. Material on record discloses that there was exchange of correspondence between Spice Texti/first petitioner and State Bank of India/first respondent. Payment towards discharge of dues is stated to have been made.

13. In letter, dated 19/2/2014, addressed to the Deputy Managing Director, State Bank of India, Mumbai, the petitioners have stated that the account became Non-performing Account and thereafter, Company has paid a sum of Rs.1,22,31,000/-, as hereunder:-

At the first time OTS	...	Rs.50,00.000
At the second time (General	...	Rs.14,31,000
OTS offer by bank	...	Rs.58,00,000

14. Petitioners have sought for payment of Rs.2 crores, on or before 30th March 2014 (Already paid Rs.20,00,000/- as upfront money, on 13/12/2013). The petitioners have prayed to accept the fresh offer of Rs.2 lakhs as OTS settlement to be paid on or before 30/3/2014 and further prayed to accepts the revised offer. Thereafter, on 23/4/2014, State Bank of India has issued a letter to the Proprietor Spice Textl, Tirupur/first petitioner intimating assignment of financial assets of the Company to Asset Reconstruction Company, Chennai, under the SARFAESI Act, 2002, which is extracted hereunder:-

"You are hereby advised that pursuant to the Assignment Agreement dated 26/3/2014, State Bank of India (SBI) has assigned to Arcil, under Section 5 of SARFAESI Act, the financial assistance granted by it to Sri.M/s.Spice Texl together with all underlying securities, rights, title and interest in respect thereof.

2. This intimation letter under Section 6 of the Securitisation Act, 2002 is for your information and record. You please contact Arcil for any future communication at the following address:-

"Asset Reconstruction Company (India) Ltd
The Ruby, 10th Floor
29 Senapati Bapat Marg
Dadar (West)
Mumbai 400 028."

15. Though in the last letter, dated 19/2/2014, addressed to State Bank of India, Coimbatore, petitioners have offered to pay Rs.2 crores, there are no averments in the supporting affidavit, nor materials to indicate that the petitioner has made any payment of the said sum offered towards discharge of debt due and payable to State Bank of India, Coimbatore, which account had subsequently been assigned to Asset Reconstruction Company (India) Ltd/second respondent.

16. Material on record discloses that Asset Reconstruction Company (India) Ltd/second respondent, has issued a notice, under sub-Section 2 of Section 13 of the SARFAESI Act, 2002, calling upon the petitioners, to pay a sum of Rs.6,02,26,885/-, with interest and charges, accruing to the credit facility, from 5th July 2017, within 60 days, in favour of Arcil-SBPS-001-XIII-Trust, failing which action would be taken, under the provisions of SARFAESI Act, 2002.

17. Responding to the above, petitioners have sent a reply, dated 21/8/2017, to the Authorised Officer, ARCIL, Chennai/second respondent, setting out the details of the payment made earlier, and offered to pay a sum of Rs.2,12,13,755/-, which according to the petitioners is the correct amount, to be paid by them. In the reply, dated 21/8/2017, petitioners have also submitted that if the Bank proceeds to take any action, under Section 13 (4) of the SARFAESI Act, 2002, the same would be resisted in the Court of law.

18. As stated supra, though a sum of Rs.2 crores has been offered to be paid in 2014, no payment has been made. Section 13 (2) notice has been issued by ARCIL/second respondent, demanding a sum of Rs.6,02,26,885/-. As against the said sum, petitioner has offered to pay Rs.2,12,13,755/-. When the demand by the assignee is for the above said sum, writ against the Bank is not maintainable. Reference can be made to the decision of the Hon'ble Supreme Court in Federal Bank of India v. Sagar Thomas reported in 2003 (10) SCC 733, wherein, after considering several decisions, at Paragraph Nos. 18 and 33, the Hon'ble Supreme Court, held as follows:

> "18. ......the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Govt); (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function.
>
> 33. ....a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor puts any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. Respondent's service with the bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank."

19. When the demand is for 6 crores, mandamus prayed, directing the Bank, to accept payment of Rs.2 crores, in one lump sum or within the time frame by this Court also cannot be

issued, for the reason that Courts have consistently held that the matter of rephasing or rescheduling of loan accounts, is purely contractual.

20. 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."

21. 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."

22. When the petitioners have offered to pay a sum of Rs.2,12,13,755/- nothing prevented them from depositing the said amount in the loan account. Debt is assigned to the ARCIL/second respondent. Consciously, petitioners have also taken a decision, to challenge the action of the Bank, if any taken, under Section 13 (4) of the SARFAESI Act, 2002.

23. 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. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. The Assistant General Manager
State Bank of India
Stressed Assets Management Branch
No.32 Montieth Road
Red Cross Buildings
Egmore
Chennai 600 008.

2. The Registrar
Debts Recovery Tribunal
Coimbatore.

+1cc to Ms.Kaavya Silambanan Associates, Advocate in sr.no.74926

W.P.No.27153 of 2017

GJII(CO)
NR 15/11/2017