

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11/1/2017

C O R A M

The Honourable Mr.Justice S.Manikumar

and

The Honourable Mr.Justice M.Govindaraj

Writ Petition No.24040 of 2016

M/s. Sri Gayathri Kitchens (P) Ltd
rep. By its Director
Mrs.R.Preetha
Chennai 600 033. ... Petitioner

Vs

The Manager
Indian Bank
Nungambakkam Branch
No.9, 7th Cross Street
Lake Area
Nungambakkam
Chennai 600 034. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the respondent to duly and favourably consider the petitioner's letter dated 19/6/2016 offering to pay a sum of Rs.1,30,00,000/- (Rupees One crore thirty lakhs only) as one time settlement.

For petitioner ... Mr.B.Natarajan

For respondents ... Mr.B.Murugavel

O R D E R

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

Guarantor, has sought for a writ of mandamus, directing the Indian Bank/respondent, Chennai, to favourably consider a letter, dated 19/6/2016, offering a payment of Rs.1,30,00,000/-, as one time settlement.

2. Record of proceeding shows that when the matter came on 13/7/2016, a Hon'ble Division Bench of this Court, in W.M.P.No.20583 of 2016 in W.P.No.24040 of 2016, while ordering notice to the respondent Bank, returnable in four weeks, granted interim stay of the sale of the assets, scheduled, on 15/7/2016, at 11.00 a.m., to 12.00 Noon, by e-auction mode, for a period of eight weeks, subject to the condition that the writ petitioner deposits a sum of Rs.50,00,000/- (Rupees Fifty lakhs only), within a period of eight (8) weeks from today. The Division Bench has made it clear that in the event of failure of the writ petitioner making such payment, interim stay of e-auction of sale shall stand cancelled and the respondent Bank, on such occasion may notify sale and go on with auction of the assets. Registry has been directed to list the matter after eight weeks.

3. On this day, when the matter came up for further hearing, Mr.B.Murugavel, learned counsel for the respondent Bank submitted that the letter, dated 19/6/2016 of the writ petitioner, offering a sum of Rs.1,30,00,000/-, as one time settlement of all the dues, to the respondent Bank, has been received, on 27/6/2016 by the Bank and that the same has been considered. The Bank has declined the same. Copy of the register letter dated 2/7/2016 of Indian Bank, sent to Mrs. Preetha, W/o. Mr.K.V.L.Narasimha Rao, produced by Mr.B.Murugavel, learned counsel for the respondent Bank is reproduced hereunder:-

"We invite reference to your letter dated 19/6/2016 received on 27/6/2016, regarding settlement of OTS in the account of M/s.Gayathri Kitchen Pvt Ltd. In this connection, we inform you that the OTS amount offered by you is very low and is not in conformity with the guidelines of the Bank.

As such, your request for OTS is declined at our end."

4. Mr.B.Murugavel, learned counsel for the Bank further submitted that though the writ petitioner in the supporting affidavit, has given her address as Mrs.R.Preetha, Director of M/s.Sri Gayathri Kitchens (P) Ltd., Door No.19 Lakshmi Narayanan Street, West Mambalam, Chennai 33, the registered letter, dated 2/7/2016, sent by the Bank to the very same address has been returned with the postal endorsement as "unclaimed".

5. Learned counsel appearing for the respondent Bank further submitted that the conditional order has not been complied with, and the same is duly acknowledged by the learned

counsel for the petitioner to Mr.B.Natarajan.

6. We have perused the photocopy of the endorsement also which is enclosed in the typed set of papers filed by the respondent Bank.

7. First of all, the prayer sought for in this writ petition is not maintainable. Secondly, the respondent Bank has considered the offer made by the writ petitioner and declined to accept.

8. After considering a catena of decisions as to 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 judicial 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."

9. Following the same, 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, at paragraph No.42, a 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".

10. At paragraph No.46, 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, the Hon'ble Division Bench has 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."

11. Cause of action for filing the instant writ petition does not survive. In the light of the above decisions, this writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Manager
Indian Bank
Nungambakkam Branch
No.9, 7th Cross Street
Lake Area, Nungambakkam
Chennai 600 034.

mp (CO)
md(09/02/2017)

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