

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2017

CORAM:

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

W.P.No.30276 of 2016

P.R.Shanmugam ... Petitioner

versus

Axis Bank Limited
rep. By its Authorized Officer
SME Centre
Corporate Banking Branch
I Floor Karumuthu Nilayam
No.192 Anna Salai
Chennai 600 002. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of mandamus to direct the respondent to forthwith consider the representation of the petitioner dated 28/7/2016 and 18/8/2016 in a time bound manner.

For petitioner : Ms.Jayanthi K. Suresh
for Mr.S.Ramesh

For respondent : Mr.S.Jayaraman

ORDER

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

Ms.Jayanthi K.Suresh, learned counsel appearing for the petitioner made submissions stating that the Guarantor is stated to have made two representations dated 28.07.2016 and 18.08.2016 for One Time Settlement. Contending inter alia that they were unanswered, writ of mandamus is sought for directing Axis Bank Limited, Chennai, the respondent herein, to forthwith consider the same in a time bound manner.

2. Record of proceedings shows that on 31.08.2016 notice was ordered. Reverting, Mr.S.Jayaraman, learned counsel for Axis Bank Limited, Chennai, submitted that the representation dated 28.07.2016, has not been acknowledged by the bank. However, he submitted that representation dated 18.08.2016, was considered and One Time Settlement proposed, was rejected. He further submitted that on 17.09.2016, a One Time Settlement was arrived at between the parties, but the guarantor has failed to honour the same.

3. Be that as it may, the instant writ petition is not maintainable in the light of the judgment of 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, wherein at paragraph No.42, the 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".

4. 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."

5. 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 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."

6. 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 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, Court cannot compel the bank for any rephasement or One Time Settlement. Decisions stated supra are proximate to the principles of law to be followed in the matter of rephasement 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.

7. Nevertheless, in the case on hand, representation dated 18.08.2016, has been considered and rejected. One Time Settlement arrived at on 17.09.2016, has not been honoured. Therefore, in the light of the above discussions and decisions, the instant writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

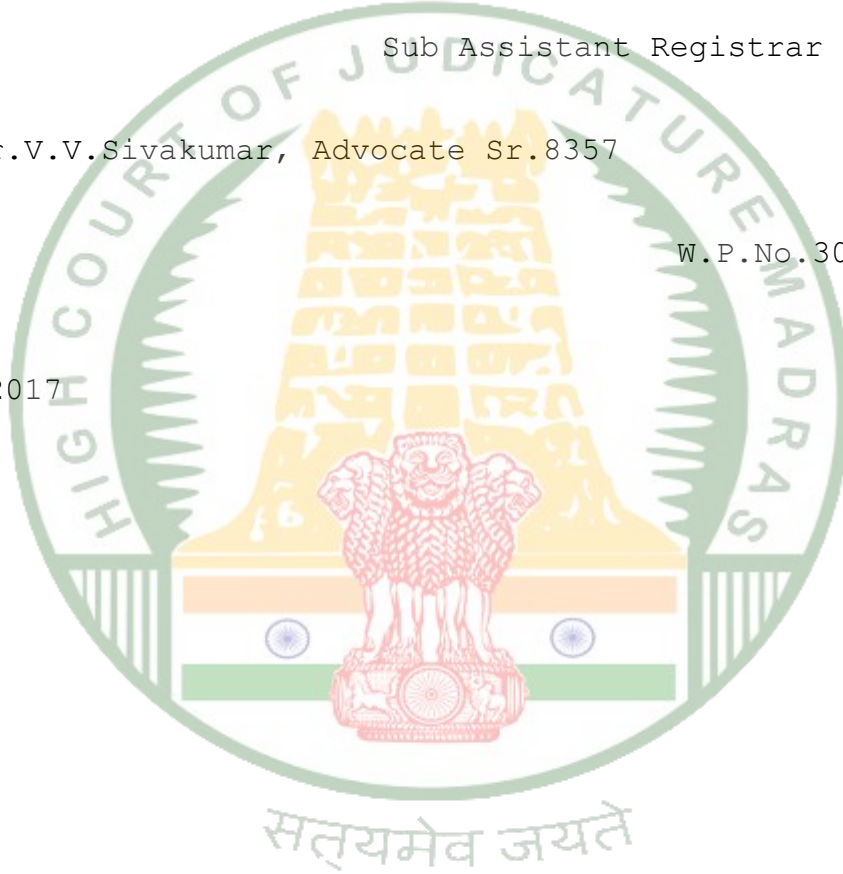
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Sub Assistant Registrar

+1cc to Mr.V.V.Sivakumar, Advocate Sr.8357

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