IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.06.2018
CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.9031 of 2018
and WMP No.10885 of 2018

P.Rajendran ... Petitioner

vs.

1. The Chief Manager & Authorised Officer,
Bank of India,
No.624, Fort Main Road,
Shevapet,
Salem-636002, Salem District.

2. The Chief Manager & Authorised Officer,
Assets Recovery Department,
Star House,
No.224, Oppanakara Street,
Coimbatore-641001,
Coimbatore District. ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the respondents to accept the dues by way of one time settlement as per the order passed in W.P.No.5654 of 2017 dated 19.04.2017 after excluding the incidental and other charges happened while invoking SARFAESI proceedings in respect of petitioner Borrowers Account in A/c.No.800829010000003 with respondents bank.

For Petitioner : Mr.M.Elango

For Respondents : Mr.F.B.Benjamin George

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

Petitioner, is a guarantor, for a sum of Rs.15,20,000/- loan availed from the respondent bank. Borrower, Ganesan, has defaulted in payment. Respondent No.2/Bank has issued a notice dated 19.10.2016, under Section 13(2) of the SARFAESI Act, 2002, demanding payment of Rs.12,25,335/-, with interest within a period of 60 days. Subsequently, notice dated 28.12.2016, has been issued under Section 13(4) r/w Rule 8 of the SARFAESI Act, stating that symbolic possession of the secured asset viz., residential house of the petitioner has been taken over. However, on 03.01.2017, once again, a notice under Section 13(4) of the Act, has been issued.

2. Material on record discloses that the guarantor / petitioner has filed W.P.No.5464 of 2017 for a writ of declaration, declaring Rule 8(1) of Rule 2002 of SARFAESI Act, as unconstitutional and consequently, to declare possession taken on 28.12.2016 and 03.01.2017 by the 2nd respondent under Section 13(4) of the Act, as null and void, in respect of the petitioner's property in Survey No.32/7-A, 32/7-A1 to an extent of 2618 sq.ft., at Vellakalpatty Village, Omalur Taluk.

3. Vide order dated 19.04.2017 in W.P.No.5654 of 2017, a Hon'ble Division Bench, by observing that the Court is not convinced by the point raised by the petitioner therein, dismissed the writ petition. However, the Hon'ble Division Bench gave liberty to the petitioner to approach the bank directly to settle the dues by way of one time settlement and in such event, it is for the bank to come forward to accept the same.

4. Supporting affidavit to the instant writ petition shows that as against the order made in W.P.No.5654 of 2017 dated 19.04.2017, a review petition No.528 of 2017, has been filed and stated to be pending. According to the petitioner, he is willing to settle the dues by way of one time settlement. Hence he has filed the instant writ petition for a mandamus, directing the respondents to accept the dues by way of One time settlement, as per the orders passed by this Court in W.P.No.5654 of 2017 dated 19.04.2017 by excluding incidental and other charges incurred by the bank, in instituting the SARFAESI proceedings.

5. Mr.F.B.Benjamin George, learned counsel appearing for the bank submitted that no such one time proposal dated 19.08.2017 has been received by the bank. Submission is placed on recored.

6. Heard the learned counsel appearing for the parties and perused the materials available on record.

7. On more than one occasion, this Court has held that in contractual matters, Court has no power to issue directions to the bank, for rescheduling/rephasing, repayment. On the above aspect, we deem it fit to consider the following decisions.

(a) 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.
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> 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.
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> 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.
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> 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."

(b) 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, a Hon'ble Division Bench of this Court, 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".

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."

8. 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., 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.

9. Though, petitioner has contended that the one time proposal dated 19.08.2017 has been made to the bank, receipt of any such proposal is refuted. No proof of such proposal, and acknowledgment by the bank is enclosed in the typed set of papers.

10. Be that as it may, even going by the order made in W.P.No.5654 of 2017 dated 19.04.2017, a Hon'ble Division Bench of this Court has only observed that the petitioner can approach the bank directly to settle the dues by way of one time settlement and in such event, it is for the bank to come forward to accept the same. No positive direction has been given by this Court to accept any such proposal.

11. In the light of the abovesaid decisions, prayer sought for in the writ petition, is not maintainable and cannot be granted. Hence, the instant writ petition is dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

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To

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Star House,
No.224, Oppanakara Street,
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Coimbatore District.

+1cc to Mr.F.B.Benjamin George, Advocate SR.No.36650
+1cc to Mr.M.Elango, Advocate SR.No.36703

W.P.No.9031 of 2018
and WMP No.10885 of 2018

GN(20/06/2018)