IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/2/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.4169 of 2018

M/s. Parta Granites
rep. By its Proprietor Mr.A.Palani
No.c, 61 Anantham Flats
TNHB Sidco Nagar Road
Villivakkam
Chennai 600 049. ... Petitioner

Vs

The Federal Bank Limited
rep. By its Branch Manager
C-48, TNHB Complex
II Avenue, Anna Nagar
Anna Nagar Branch
Chennai 600 040. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorarified mandamus to call for the records of the concern proceedings of demand notice dated 15/12/2017 issued by the respondent Bank and the file connected therein and consequently, quash the said proceedings and consequently direct to implement the order in S.A.No.561 of 2016 passed by the Debts Recovery Tribunal - III.

For petitioner ... Mr.C.Kanagaraj

O R D E R

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

M/s. Parta Granites, Chennai, has sought for a writ of certiorarified mandamus, to quash the demand notice, dated 15/12/2017, issued under Section 13 (2) of the SARFAESI Act, 2002, and consequently, prayed for a direction to implement the order in S.A.No.561 of 2016, dated 14/3/2017, on the file of the Debts Recovery Tribunal - III, Chennai.

2. Material on record discloses that the petitioner has availed the following facilities:-

| NATURE OF LIMIT | AMOUNT | DATE |
|---|---|---|
| Packing Credit - 1 | Rs.200 L | 26/6/2013 |
| FUBP (LC) - 2 | Rs.50 L | 26/6/2013 |

In consideration thereof, the petitioner has offered security in respect of

(i). hypothecation of stock of granites with 25% margin procured for export under process for PCL limit;

(ii). Document of title to goods/usance bills arising out of export under LC negotiated by Bank for FUBP Limit; and also created

(iii). Equitable mortgage in respect of 5 items of properties, viz.,

(a). 509 sq.ft, Flat No.C/61 at 3rd Floor, Old Block No.c, HIG Anandam Flats, SIDCO Nagar, Villivakkam, Chennai, in the name of A.Palani, valued at Rs.26.25 L on 8/7/2014,

(b). UDS 322 sq.ft., BU 509 sq.ft., flat No.D/50 at 3rd Floor, Old Block No.D, HIG Anandam Flats, SIDCO Nagar, Villivakkam, Chennai, in the name of A.Palani valued at Rs.26.25 L on 8/7/2014,

(c). 634 sq.ft., Flat No.F2, 1st Floor, Hari Chithram Apts, Old No.16/3, New No.71 Gangadharan Street, Villivakkam, Chennai 600 049, in the name of A.Palani valued at Rs.52.09 L on 8/7/2014,

(d). UDS 427 sq.ft., with 950 sq.ft, Flat No.1344, 4th Floor, 13th Block, Anjali Apts, No.264, MTH, Villivakkam, Chennai 49 in the name of Smt.Tamil Selvi spouse of the borrower valued at Rs.46 L on 9/2/2013,

(e). SY No.127, 128, 125, 128/124 with extent of 10 acres 8 cents, Kalappaipatti, Tirunelveli, Tamil Nadu in the name of Smt.Tamil Selvi & Shri Palani valued at Rs.15.12 L on 10/10/2013,

(f). Cut Back Deposit of Rs.1.10 L.

3. For the default committed, account has been declared as Non Performing Asset and bank issued a notice, dated 21/6/2016, under Section 13 (2) of the SARFAESI Act, 2002.

4. Reply, dated 16/8/2016, has been sent. Thereafter, Bank has issued possession notice dated 6/9/2016, under Section 13 (4) of the SARFAESI Act, 2002. Being aggrieved, petitioners have filed S.A.No.561 of 2016 before the Debts Recovery Tribunal - 3, to set aside the possession notice. Opposing the prayer sought for, Bank has filed counter affidavit.

5. On 14/3/2017, when S.A.No.561 of 2016 came up for hearing, Debts Recovery Tribunal - 3, Chennai, passed the following order:-

"This SA is filed challenging the Possession Notice dated 6/9/2016 issued by the respondent Bank for recovery of a sum of Rs.2,63,29,097.40 p.

Both sides are present.

Heard the ld. Senior Counsel appearing on behalf of the appellant who submits that the appellants in compliance of the directions of this Tribunal are ready with demand drafts for Rs.20 lakhs being remitted as the money for release of the agricultural property documents, which are not covered under the SARFAESI Act, so as to enable the appellants to utilize the said documents for discharge of the balance amount due to the respondent. The said demand drafts viz., No.860223 dated 13/3/2017 for Rs.15,00,000/- drawn on IOB and No.315553 dated 13/3/2017 for Rs.5,00,000/- drawn on Lakshmi Vilas Bank are handed over to the Ld counsel for the respondent Bank who in turn has handed over the same to the officer of the respondent Bank. Mr.Harikrishnan who is present in the Court hall to attend the matter.

It is also submitted on behalf of both the parties that a proposal for settlement has been given to the respondent Bank, which is under consideration and submits that Rs.20 lakhs paid today may be considered as the upfront money for consideration of OTS proposal notwithstanding the release of the agricultural property documents, for which the bank official submits that proper approval has to be obtained from his higher authorities, which will be processed in due course and on obtaining the approval he shall release the documents to the appellants.

Incidentally, the respondent bank has conceded to the infirmities alleged by the appellants to the subject impugned possession notice and prays the Tribunal to permit them to withdraw the said possession notice and filed a memo to that effect, a copy of which is also served on the ld. Counsel appearing for the appellant.

Heard both the Ld. Counsels.

In the circumstances, this appeal is allowed and the respondent Bank is directed not to debit the possession notice expenses to the borrower's loan account. Consequently, possession is restored to the mortgagor.

As the impugned notice is withdrawn by the secured creditor, the present appeal has become infructuous. Respondent bank is directed to endeavor obtaining necessary approvals for release of the agricultural properties within a period of three weeks from today and then release the documents within the said time frame notwithstanding the pending proposal for OTS with a liberty to both the parties to arrive at an amicable settlement. The respondent bank, however, will be entitled to proceed further in accordance to law, if the default of the borrower continues.

This SA is disposed of with the above observations."

6. Thereafter, petitioner has sent a letter, to give credit of interest subsidy, and to consider the proposal for One Time Settlement/restructuring. Further request has been made on 27/3/2017. On 4/12/2017, through their lawyer, Bank has sent a notice as hereunder:-

"Under instructions from and on behalf of our client, The Federal Bank Limited, Asset Recovery Branch, at No.57 Royapettah High Road, Chennai 600 014, we are issuing this notice to all of you as follows:-

1. Out client states that at the request of 1st and 2nd of you, the Bank had sanctioned the following facilities.

| S.No. | Nature of Loan | Loan Amount | Date of facility |
|---|---|---|---|
| 1 | PCC | 34,00,000.00 | 29/12/2010 |
| 2. | FDBP/FUBP | 35,00,000.00 | 29/12/2010 |

2. Our client states that at your request the said facilities had been enhanced as follows:-

| S.No | Nature of loan | Loan Amount | Date of facility |
|---|---|---|---|
| 1 | PCC | 2,00,00,000.00 | 26/6/2013 |
| 2 | FDBP/FUBP | 50,00,000.00 | 26/6/2013 |

Both of you had executed the documents to secure the said facilities.

3. Our client states that both of you has committed default in complying with the sanctioned terms and has been seeking time for the compliance of the same every time whenever our client indicated/pointed out the same to both of you.

4. Our client states that 1st of you had created equitable mortgage and registered the MODT vide No.6571 of 2013 to secure the said facilities.

5. Our client states that 2nd of you had created equitable mortgage, and registered the MODT vide No.6572 of 2013 to secure the said facilities.

6. Since you have not made payment, you account has been classified as Non-performing Asset (NPA) on 30/4/2016, as per the guidelines issued by the Reserve Bank of India.

7. Our client states that both of you had agreed to the terms in the sanctioned letter and did not abide by the terms of the sanction and both of you had been evading compliance.

8. Our client states that in spite of repeated follow-ups made by our client, both of you had failed to comply with the terms of the sanction. Therefore, the said facilities are being hereby recalled.

9. Our client states that the total outstanding amount with interest is Rs.2,68,63,402/- in respect of said facilities as on 8/12/2017.

Therefore, we hereby call upon both of you to pay the total outstanding balance amount of Rs.2,68,63,402/- together with interest as stated above within 7 days of the receipt of this notice, failing which our client will be constrained to take appropriate legal action against both of you, at your costs and consequences."



7. Petitioners have sent a reply dated 15/12/2017, denying the liability of a sum of Rs.2,68,63,402/- and also contended that the petitioner's account cannot be classified as Non-Performing Asset. In the above said reply, petitioners have also contended that Bank has committed contempt of Court.

8. When the matter stood thus, Bank has issued a fresh notice, under Section 13 (2) of the SARFAESI Act, 2002, dated

15/12/2017.
Petitioner has contended that a reply dated 25/1/2018, has been sent under Section 13 (A) of the SARFAESI Act, 2002.

9. By impleading Mr.A.Palani, Proprietor of M/s. Parta Granites and 2. Mrs. Tamilselvi, as defendants, Federal Bank Limited, Chennai has filed O.A.No.16 of 2018 before the Debts Recovery Tribunal - 3, Chennai, for the following reliefs:-

> "(i). That a Recovery Certificate be issued by this Hon'ble Tribunal in favour of the appellant as against the defendants (jointly and severally) for an amount of Rs.3,29,78,553.18/- being the amount due as on date of filing this application, together with interest thereon as per the above para (i) and costs and other charges till the entire amount is paid/realised
>
> (ii). That defendants be ordered and decreed to pay jointly and severally to the applicant the dues mentioned in prayer ii above by a date that may be fixed for redemption by this Hon'ble Tribunal and in the event of defendants committing defaults to pay the same by that date, the schedule properties described in schedule herein be sold by and pursuant to the orders and directions of this Hon'ble Tribunal and the net sale proceeds thereof be ordered to be paid to the applicant."

10. Petitioner has also received summons from the Debts Recovery Tribunal - I, Chennai. At this stage, petitioners have filed the instant writ petition and sought for a writ of certiorarified mandamus, on the grounds inter alia that the Bank has not given proper calculation; not considered the OTS proposal; and declaration of NPA was erroneous. Further contention has also been made that the Bank has not honoured the order of the Debts Recovery Tribunal in S.A.No.561 of 2016.

11. Heard Mr.C.Kanagaraj, learned counsel for the petitioner and perused the materials available on record.



12. When the Bank has instituted O.A.No.16 of 2018, for recovery of Rs.3,29,78,553.18, with interest, as stated supra, it is for the petitioner to submit a written statement in the said O.A and take all tenable defence. Attempt of the petitioner, to quash 13 (2) notice, dated 15/12/2017, cannot be countenanced. Contention that the Bank has not even considered the objections, dated 25/1/2018, sent under Section 13 (A) of the SARFAESI Act, 2002, can also be raised before the Debts Recovery Tribunal - I.

13. Notice under Section 13(2) is only a demand made by the Bank and in Mardia Chemicals v. Union of India reported in AIR 2004 SC 2371 : 2004(4) SCC 311, has held that notice under Section 13(2) would not give rise to a cause to challenge. However, as per Section 13(3A) of the SARFAESI Act, 2002, if, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower: PROVIDED that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A. In the case on hand, Bank has issued a fresh demand notice, dated 15/12/2017, under Section 13 (2) of the Act and instituted proceedings for recovery. On the aspect as to whether a borrower can seek for a mandamus, against the bank, for settlement as proposed, we deem it fit to consider the few decisions of this Court.

14. 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."

15. A Hon'ble Division Bench 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, 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."

16. In the light of the discussion and decisions considered, we hold that there is no contempt. Writ petition is not maintainable and accordingly dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-)

//True Copy//

Sub Assistant Registrar

mvs.
To
The Branch Manager
Federal Bank Limited
C-48, TNHB Complex
II Avenue, Anna Nagar
Anna Nagar Branch
Chennai 600 040.
+1cc to Mr.C.Kanagaraj Associates, Advocate, sr.14971

W.P.No.4169 of 2018

SS(CO)
RMP(22/03/2018)