

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.01.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.Nos.944 to 946 of 2018
and WMP Nos.1141 to 1143 of 2018

PPS Enviro Power Pvt. Ltd.,
Rep. by its Authorised Signatory,
Ms.Ramya Jayaraj ..Petitioner in all W.Ps.

vs.

1. State Bank of India,
Rep. by Assistant General Manager &
Authorised Officer,
Stressed Assets Management Branch,
"Red Cross Buildings", No.32, Montieth Road,
Egmore, Chennai - 600 008.

2. State Bank of India,
Represented by its Deputy General Manager,
Commercial Branch - 4168,
Bank Street, Koti, Hyderabad 500 095.

3. Indian Overseas Bank,
Rep. by its Assistant General Manager,
No.109, Nungambakkam High Road,
Nungambakkam, Chennai - 600 034. ..Respondents in all W.Ps.

Prayer in WP No.944 of 2018: WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing the 1st respondent to consider the restructuring proposal dated 7.10.2016, submitted by petitioner to the 2nd respondent after giving a reasonable opportunity to the petitioner to explain the proposal and pass appropriate directions on the Restructuring Proposal dated 7.10.2016 submitted by the petitioner.

Prayer in WP No.945 of 2018: WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing the 1st respondent to issue directions to the 2nd respondent to clear the Sales Tax Encumbrance issue relating to the Vellore Property auctioned by erstwhile State Bank of Hyderabad and sold to the petitioner

company the details of the property which are given below: (a) Land measuring an extent of 2.08 Acre out of 3.08 Acre in Punja S.No.455/2B1 (Old S.No.455/2B), No.59, Kalaniapakkam Village, Vellore Taluk; (b) Land measuring an extent of 1.00 Acre out of 3.08 Acre in Punja S.No.455/2B2 (Old S.No.455/2B), No.59, Kalaniapakkam Village, Vellore Taluk.

Prayer in WP No.946 of 2018: WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, forbearing the 3rd respondent from taking any coercive measures to recover its loan advanced for the petitioner working capital requirements, vide Letter dated 18.8.2014 pending consideration of the Restructuring Proposal dated 7.10.2016 submitted by the petitioner to the 2nd respondent.

For Petitioners : Mrs.Nalini Chidambaram, Sr. Counsel
in all W.Ps. for Mrs.C.Uma.

COMMON ORDER

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

In W.P.No.944 of 2018, petitioner has sought for issuance of a writ of mandamus, directing the 1st respondent to consider the restructuring proposal dated 7.10.2016, submitted by petitioner to the 2nd respondent after giving a reasonable opportunity to the petitioner to explain the proposal and pass appropriate directions on the Restructuring Proposal dated 7.10.2016 submitted by the petitioner.

2. In W.P.No.945 of 2018, petitioner has sought for issuance of a writ of mandamus, directing the 1st respondent to issue directions to the 2nd respondent to clear the Sales Tax Encumbrance issue relating to the Vellore Property auctioned by erstwhile State Bank of Hyderabad and sold to the petitioner company the details of the property which are given below: (a) Land measuring an extent of 2.08 Acre out of 3.08 Acre in Punja S.No.455/2B1 (Old S.No.455/2B), No.59, Kalaniapakkam Village, Vellore Taluk; (b) Land measuring an extent of 1.00 Acre out of 3.08 Acre in Punja S.No.455/2B2 (Old S.No.455/2B), No.59, Kalaniapakkam Village, Vellore Taluk.

3. In W.P.No.946 of 2018, petitioner has sought for issuance of a writ of mandamus, forbearing the 3rd respondent from taking any coercive measures to recover its loan advanced for the petitioner working capital requirements, vide Letter dated 18.8.2014 pending consideration of the Restructuring Proposal dated 7.10.2016 submitted by the petitioner to the 2nd respondent.

4. In support of the prayer sought for, Mrs.Nalini Chidambaram, learned senior counsel made submissions that due to various market conditions and receivables, representation dated 07.10.2016 has been made for restructuring. Bank has not considered the same, but, proceeded to invoke SARFAESI, Act, 2002. Learned senior counsel made it clear that SARFAESI proceedings are not challenged.

5. Material on record discloses that though a representation dated 07.10.2016 has been made for restructuring, on 14.11.2017, bank has invoked Section 13(2) of SARFAESI Act, demanding Rs.234,87,62,756.59p. as on 31.10.2017 with further interest at the contractual rate applicable to the facilities together with incidental expenses, costs, charges, etc. On receipt of the notice issued under Section 13(2) of the Act, petitioner can always send a representation /objections under Section 13(3A) of the Act, and as the per the statute, reply if any by the bank, cannot be challenged.

6. All the above three prayers are not maintainable. SARFAESI Act, 2002, does not contemplate any representation to be considered. When no right is conferred, mandamus cannot be issued.

7. Though Ms.Nalini Chidambaram, learned Senior counsel urged this Court to direct the bank to consider the abovesaid representation, we are not inclined to issue any directions.

8. Further, 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 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. 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."

10. Decisions stated supra are proximate to the principles of law, to be followed, in the matter of rephasing and settlement of dues. In the light of the above discussions and decisions, the writ petitions are dismissed. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

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

2. The Deputy General Manager,
State Bank of India,
Commercial Branch - 4168,
Bank Street, Koti, Hyderabad 500 095.

3. The Assistant General Manager,
Indian Overseas Bank,
No.109, Nungambakkam High Road,
Nungambakkam, Chennai - 600 034.

+lcc to Mrs.C.Uma, Advocate, S.R.No.9171

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GMI (CO)
RRK(18/01/2018)



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