IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 3/4/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.7487 of 2018

P.Sengottuvel ... Petitioner

Vs

1. The District Collector
   Erode.

2. The Authorised Officer
   Canara Bank
   Assets Recovery Branch
   166 TV Swamy Road
   R.S.Puram
   Coimbatore 641 002. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of mandamus to direct the second respondent and proceed with further action on the onetime settlement as offered by the petitioner herein 15/11/2017, by considering the representation of the petitioner dated 7/3/2018, within an appropriate time.

For petitioner ... Mr.R.Nalliyappan

For respondent ... Mr.M.Sridharan Rangarajan
Additional Government Pleader

- - - - -

O R D E R

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

Petitioner, has borrowed a sum of Rs.5 crores and 13 lakhs, in the year 2010, repaid Rs.2.50 crores, by instalments, defaulted, was issued with notices, dated 29/1/2013, under Section 13 (2) of the SARFAESI Act, 2002, and possession notice, dated 9/4/2013, challenged the same, in S.A.No.114 of 2013, before the Debts Recovery Tribunal, and failed to succeed, vide order, dated 10/9/2014, has offered, payment by way of One Time Settlement. Bank has declined to accept. Matter was also referred to

Mediation.

2. On the application of the Bank, District Collector-cum-District Magistrate, Erode District, has issued a notice, dated 25/1/2018, to the Authorised Officer, Canara Bank, Asset Recovery Branch, R.S.Puram, Coimbatore, and four others, including the petitioner, to appear before him, on 5/2/2018, with documents.

3. When the matter stood thus, petitioner has submitted a representation, dated 7/3/2018, to the Authorised Officer, Canara Bank, Asset Recovery Branch, R.S.Puram, Coimbatore, which according to the petitioner has not been responded and left with no other alternative, filed the instant writ petition for a mandamus, directing the Authorised officer, Canara Bank, Assets Recovery Branch, Erode, second respondent, to proceed with OTS offered by the petitioner, dated 15/11/2017.

4. 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 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."

5. A Hon'ble Division Bench judgment 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, wherein 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".

6. 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."

7. Decisions stated supra are proximate to the principles of law to be followed in the matter of rephasement and settlement of dues. In the light of the above discussions and decisions, the writ petition is dismissed. No costs.

Sd/-
ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

mvs.

To

1. The District Collector
Erode.

2. The Authorised Officer
Canara Bank
Assets Recovery Branch
166 TV Swamy Road
R.S.Puram
Coimbatore 641 002.

+1 cc to Mr.R.Nalliyappan, Advocate SR.NO. 24665

+1 cc to the Government Pleader, High Court, Chennai SR.NO. 25185

W.P.No.7487 of 2018

VG-II
JK 18/04/18