IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/3/2018

C O R A M

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

Writ Petition No.5529 of 2018

1.R.M.Zahoorunnisha

2. B. Suresh Kumar ... Petitioner

Vs

1. The Managing Director
Repco Home Finance Ltd
III Floor, Alexander Square
New No.2, Old No.34 & 35
Sardarpatel Road
Guindy
Chennai 600 032.

2. The Authorised Officer
Repco Home Finance Ltd
Anna Nagar branch
Plot No.4055, U Block
No.40 I Floor
4th Main Road, Anna Nagar
Chennai 600 040. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of mandamus to direct the respondents to consider and pass orders on the petitioner's representation dated 10/2/2018 within the time limit that may be fixed by this Court and consequently, direct the respondents not to take any coercive steps.

For petitioners ... Mr.S.Vignesh
for Mr.V.Chandrasekaran

O R D E R
(Order of the Court was made by S.MANIKUMAR, J)

The petitioners have availed credit facility of Rs.1,50,00,000/- in the year 2013 and another credit facility of

Rs.1,00,00,000/-, in the year 2015. Petitioner's husband was a co-borrower. There was default in payment. Hence Bank has issued notice, under Section 13 (2) of the SARFAESI Ac, 2002, dated 12/6/2017, demanding repayment. Petitioners seemed to have sent a letter, dated 3/10/2017, for One Time Settlement. Thereafter, Bank has issued a tender-cum-auction sale notice, dated 18/12/2017, fixing the auction, on 30/1/2018. As on 14/12/2017, a sum of Rs.1,75,99,658/- and Rs.1,26,53,390/- respectively, were stated to be dues in two loan accounts. Reserve price has been fixed as Rs.3,40,00,000/-. Petitioners, stated to have sent another representation, dated 10/2/2018, offering OTS of Rs.1,85,00,000/-, as full and final settlement, before 31st March 2018. Contending inter alia that the said representation has not been considered, and left with no other alternative, instant writ petition has been filed for a mandamus, directing the respondents to consider and pass orders, on the representation, dated 10/2/2018, within the time limit, as fixed by this Court.

2. Heard Mr.S.Vignesh, learned counsel for the petitioner and perused the materials available on record.

3. Statue does not contemplate any representation to be considered for One Time Settlement. When no right is conferred, under the statutory provisions, mandamus cannot be issued.

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 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."

6. 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. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

mvs.

To

1. The Managing Director
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+1cc to Mr.V.Chandra Sekaran, Advocate SR.No.18864

W.P.No.5529 of 2018

GN(04/04/2018)