IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6/3/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE T.RAVINDRAN

Writ Petition No.4933 of 2018

M/s. Arke Designs
rep. By its Proprietor Mr.S.Saravanan
No.19 Pugalendhi Street
Gayathri Nagar
Sam Avenue
Sembakkam
Chennai 600 073. ...Petitioner

Vs

Karur Vysya Bank
rep. By its Authorised Officer
No.52 Rajiv Gandhi Salai
IT Highway Road
Chennai 600 119. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of mandamus to direct the respondent Bank to consider the petitioner's representation dated 23/2/2018 for One Time Settlement for the loan Account No.128080104.

For Petitioner ... Mr.B.Harikrishnan

O R D E R

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

Material on record discloses that a sum of Rs.40 lakhs has been availed as loan, on 16/3/2013 and for the default, Karur Vysya Bank, Chennai, has classified the account as Non Performing Asset, and issued a notice, under Section 13 (2) of the SARFAESI Act, demanding a sum of Rs.44,98,896.57, as on 27/5/2015. Thereafter, possession notice, dated 10/8/2015, under Section 13 (4) of the SARFAESI Act, 2002 has been issued.

2. M/s. ARKE Designs, Chennai, petitioner herein has filed S.A.No.341 of 2015. On 27/8/2015, Debts Recovery Tribunal - 3, Chennai, has passed an interim stay of possession notice, on condition, the applicant therein/writ petitioner, pays a sum of Rs.8 lakhs, to the credit of the loan account, on or before 26/9/2015. Subsequently, on 6/1/2017, before the Debts Recovery Tribunal - III, Chennai, applicant therein/writ petitioner, has filed an affidavit, stating that part of the claim amount made by the Bank would be remitted, on or before 30/1/2017 and the balance shall be cleared on or before 28/2/2017. Placing on record, S.A.No.341 of 2015, has been disposed of, on 6/1/2017.

3. While doing so, Debts Recovery Tribunal - 3, Chennai, has observed as hereunder:-

> "Consequently in terms of the above affidavit, this S.A is disposed of, however with a liberty to the respondent bank to prosecute its actions under SARFAESI Act, if the borrower does not comply his undertakings in terms of the affidavit filed today. Interim stay, if any granted and subsisting till this day stands vacated."

4. Karur Vysya Bank Limited, Chennai, has issued sale notice, dated 15/4/2017, fixing the auction on 18/5/2017. Amount mentioned in the sale notice is Rs.40,78,541.81. Two applications, S.I.A.Nos.706 and 707 of 2017 have been filed, for urgent hearing and stay. Before the Debts Recovery Tribunal - III, Chennai, in S.A.No.141 of 2017, on 28/4/2017, submission has been made by the learned counsel for the applicant therein/writ petitioner that the applicant was ready with a Demand Draft, dated 27/4/2017, for a sum of Rs.8 lakhs, being 20% of the amount mentioned in the sale notice. Placing on record, Debts Recovery Tribunal - III, Chennai, has granted interim stay of all further proceedings, pursuant to the sale notice, dated 15/4/2017. Thereafter, the petitioner has sent a letter, dated 23/2/2018, seeking for One Time Settlement, to the Authorised Officer, Karur Vysya Bank, Chennai, respondent herein. Further contending that the said letter has not been responded and that there is no alternate and efficacious remedy, instant writ petition has been filed for a mandamus, directing the Bank to consider the representation dated 23/2/2018.

5. As stated supra, on 6/1/2017, in S.A.No.341 of 2015, writ petitioner has filed an affidavit, before the Debts Recovery Tribunal - III, Chennai, stating that part of the claim amount would be remitted, on or before 30/1/2017 and the balance shall be cleared, on or before 28/2/2017. The Debts Recovery Tribunal - III, Chennai, has disposed of S.A.No.341 of 2015, on 6/1/2017, in terms of the affidavit and granted liberty to the Bank, to pursue further action, under the SARFAESI Act, 2002, if

the borrower does not comply his undertaking in terms of the affidavit.

6. Though Mr.B.Harikrishnan, learned counsel for the petitioner submitted that 95% of the loan amount has been cleared but then the Bank officials have harassed the petitioner and therefore, direction as prayed for, may be issued, this Court is not inclined to accept the said contention, for the reason that on more than one occasion, this Court held that no mandamus can be issued to the Bank, to accept to the OTS as offered. Reference can be made to 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, wherein, 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."

7. 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 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."

8. That apart, before the Tribunal, the petitioner has already filed an affidavit stating that part of the amount would be remitted, on or before 30/1/2017 and the balance would be cleared, on or before 28/2/2017. Recording the same, O.A. No.341 of 2015, has been disposed of, on 6/1/2017. Now, after filing an affidavit before the Tribunal, after one year, a new proposal, dated 23/2/2018, has been sent. In the light of the above discussions and decisions, the writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

To

The Authorised Officer
Karur Vysya Bank
No.52 Rajiv Gandhi Salai
IT Highway Road
Chennai 600 119.

+1 CC to M/s. B. Harikrishnan, Advocate sr 16966.

W.P.No.4933 of 2018

AK(CO)
SP(23/03/2018)