IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2018

CORAM:

THE HON'BLE MR. JUSTICE S.MANIKUMAR
and
THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.No.11659 of 2018
and W.M.P.No.13648 of 2018

M.A.Hasan Abdul Kader ... Petitioner

Vs.

The Deputy General Manager,
State Bank of India,
Stressed Assets Management Branch,
Red Cross Buildings,
No.32, Red Cross Road,
Egmore, Chennai - 600 008. ... Respondent

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying in the nature of Writ of Certiorarified Mandamus, to call for the records of the respondent Bank in One Time Settlement cancellation letter dated 03.04.2018 and quash the same and direct the respondent Bank to adhere to the terms and conditions stipulated in the One Time Settlement letter dated 12.01.2018 of the respondent Bank.

For Petitioner : M/s.B.Natarajan

For Respondent : Mr.M.L.Ganesh

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O R D E R

(Order of the Court was made by SUBRAMONIUM PRASAD, J.)

The Writ Petitioner, by this present Writ Petition, seeks for a Writ in the nature of Writ of Certiorarified Mandamus for setting aside the letter dated 03.04.2018 cancelling an One Time Settlement offer dated 12.01.2018 of the respondent Bank and also for a direction to the respondent Bank to adhere to the terms and conditions stipulated in the One Time Settlement letter dated 12.01.2018.

2. The petitioner is the guarantor of various loan facilities availed by the M/s.CCS Infotech Limited (CCSIL). Three flats viz., two flats at New No.81, Nelson Manickam Road, Aminjikarai, Chennai, and one property at T.Nagar, were given as security for the loan availed by the principal borrower i.e. M/s.CCS Infotech Limited.

3. In the proceedings initiated by the Bank, the Bank sold the property at T.Nagar by way of auction for Rs.4.55 Crores. The auction purchaser defaulted in the payment of amount and sale was cancelled. The challenge of the auction purchaser was rejected by the Debts Recovery Tribunal.

4. On 12.01.2018, a One Time Settlement propsal was given by the respondent Bank. Under this One Time Settlement, petitioner was to pay of Rs.11.55 Crores to the Bank. The amount was to be paid as under:-

> a) An amount of Rs.35.00 lakhs already paid was appropriated towards settlement.
> b) Rs.1.15 Crores (10% of the offer amount) had to be paid/ remitted within 15 days from the date of acceptance of the compromise offer.
> c) Rs.3.50 Crores (30% of the offer amount) had to be paid/remitted within 8 months from the date of acceptance of the compromise offcer.
> d) The balance amount of Rs.4.55 Crores (40% of the offer amount) had to be paid/remitted within 12 months from the date of acceptance of the compromise offer.

5. Regarding the release of the title deeds of the T.Nagar property, it was offered as under:-

> VIII. The title deeds of the mortgaged properties would be handed over upon receipt of the relative market value as per the valuation reports on record with the Bank along with interest for delayed period, if any. Incidentally, we have to advice that the S.A.No.34/2017 filed by Mr.S.Elangovan, the successful auction bidder in respect of T.Nagar property has been dismissed by DRT-I, Chennai on 28.08.2017. In case he preferes an appeal within the limitation period, the Bank would endeavor to get the appeal also dismissed. However, as a matter of prudence, it is proposed to release the title deeds of T.Nagar property against receipt of Rs.4.55 cr., the last installment.

6. It was also stipulated that if the entire compromise amount is not paid within three months, interest at the rate of

10.65% per annum on the balance amount, was to be charged from the petitioner.

7. The One Time Settlement proposal also contained a default clause, which reads as under:-

> In the event of any failure to honor any of the terms of the compromise settlement, the Bank will be entitled to exercise against the borrower/guarantors all the rights and remedies available prior to the compromise settlement. This will include collection from the borrower/guarantors of the entire amount due prior to the compromise settlement, together with interest thereon at the applicable rates.

8. The petitioner did not pay the first installment of Rs.1.15 Crores. Instead filed a counter on 20.02.2018 stating as under:-

> "We are accepting the OTS proposal on the conditions mentioned below:-
>
> 1. The first property in Nelson Manickam Road will be released on payment of Rs.3.75 crs including Rs.35 lakhs paid already (in no lien account).
>
> 2. The second property in Nelson Manickam road will be released on payment of Rs.3.25 crs.
>
> 3. As explained many times we are going to raise funds by selling our Nelson Manickam road properties for Rs.3.5 crs each, we are not in a position to pay any delayed interest payment as buyers are ready and will not agree for any extra interest payment. Hence as a special case we request you to waive off the interest.
>
> 4. The remaining payment of Rs.4.55 crs for our T.Nagar Property will be made only after the legal issues/cases between the Bank and e-auction purchaser Mr.S.Elangovan is finally settled.
>
> 5. We will not pay any interest for Rs.4.55 crs for our T.Nagar property till the legal issues/cases between the Bank and e-auction purchaser Mr.S.Elangovan is finally settled.
>
> 6. If Bank conveys the property to Mr.S.Elangovan our OTS proposal will be reduced to Rs.7 crs only and the Bank should issue no dues

certificates to us, withdraw all cases filed against the guarantors/directors and withdraw all personal guarantees.

It will be our endeavor to ensure that we make our payment as agreed upon without any delay as buyers are ready and once again request you to waive the interest @ 10.65% as stipulated to you towards delay in repayment if any (which we do not foresee) especially keeping in view that the company being a stick unit and we have lost everything."

9. This was rejected by the Bank, by its letter dated 23.02.2018. This was followed by further correspondence between the Bank and the petitioner regarding the One Time Settlement proposal.

10. By its letter dated 03.04.2018, the Bank cancelled the One Time Settlement proposal leading to the filing of the present Writ Petition.

11. Heard the learned counsel appearing for both sides and perused the documents.

12. The Writ Petitioner, by the present Writ Petition, seeks to challenge the letter dated 03.04.2018 cancelling the One Time Settlement proposal dated 12.01.2018.

13. It is well settled that once the settlement talks between the Bank and the guarantors has failed a Writ Petition under Article 226 cannot be invoked for forcing the Bank to enter into any settlement.

14. A Division Bench of this Court in Tamilnadu Industrial Investment Corporation Vs. Millenium Business Solutions Private Limited, reported 2004 (5) CTC 689 has observed as under:-

"7. In our considered opinion it is not proper for the Court to interfer 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 connecting with the laon. It is only the bank or the financial institution which granted the laon 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 constract, 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, 1972. 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. In view of the settled position of law, the present Writ Petition is not maintainable.

16. The grievance of the petitioner regarding charging of interest on Rs.4.55 Crores, from the beginning of the One Time Settlment is of no consequence. The petitioner, in order to show bona fides, ought to have started making payment as per the proposal. The petitioner wants of delay the payment under the One Time Settlement offer given by the Bank. Writ Jurisdiction cannot be invoked for forcing the Bank to enter into One Time Settlement in the manner the borrower wants the settlement to be implemented.

17. The letter dated 03.04.2018 issued by the Bank treating the One Time Settlement sanctioned as cancelled with immediate effect, does not warrant any interference under Article 226 of the Constitution of India.

18. The learned counsel appearing for the petitioner submits that the petitioner does not want to press the second direction to the respondent Bank to adhere to the terms and conditions stipulated in the One Time Settlement sanction letter dated 12.01.2018.

19. In view of the above, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

The Deputy General Manager,
State Bank of India,Stressed Assets Management Branch,
Red Cross Buildings,No.32, Red Cross Road,
Egmore, Chennai - 600 008.

+1cc to Mr.M.L.Ganesh, Advocate, S.R.No.36424

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cs/28/06/18