IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12/6/2018

C O R A M

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

Writ Petition No.11808 of 2018

M/s. Hotel Milestonnez India Private Ltd
rep. By its Managing Director
Mr.M.Rajamanickam
No.34 Santhavelur
Sunguvarchatram Post
Sriperumbudur
Kancheepuram District 602 106. ... Petitioner

Vs

State Bank of India
rep. By its Authorised Officer
Stressed Assets Management Branch
Office at "Red Cross Buildings"
No.32 Montieth Road
Egmore
Chennai 600 008. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of mandamus to direct the respondent to extend the time by eight weeks on payment of 12% interest per annum for the balance amount of Rs.5,79,23,877/-. (Rupees Five Crore Seventy Nine Lakhs and Twenty Three Thousand Eight Hundred Seventy Seven Only)

For petitioner ... Mr.S.Jayakumar

For respondent ... Mr.K.Balamurali
for M/s.Shivakumar & Suresh

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O R D E R

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

Material on record discloses that M/s. Hotel Milestonnez India Private Limited, No.34 Santhavelur, Sunguvarchatram Post, Sriperumbudur, Kancheepuram District, has availed loan for a sum of Rs.10 crores, as term loan and Rs.1 crore as cash credit facility, from State Bank of India, Chennai. On 17/6/2013, State Bank of India, Industrial Finance Branch, Chennai, has sanctioned a Corporate Term loan of Rs.5,25,00,000/-. Yet another sum of Rs.1,30,00,000/- has been sanctioned as term loan.

2. Petitioner has committed default. Bank has issued a Demand Notice, dated 20th January 2015, under Section 13 (2) of the SARFAESI Act, 2002, demanding a sum of Rs.12,06,18,484.26, with further interest and incidental expenses and costs to be paid, within sixty days, from the date of payment, failing which appropriate action would be taken, under the provisions of the SARFAESI Act, 2002.

3. Possession notice, dated 7/9/2015, under Section 13 (4) of the SARFAESI Act, 2002, issued to the petitioner, has been acknowledged. Petitioner seemed to have made representation, to the Bank, for One Time Settlement and that the same has been accepted by the Bank, vide, letter, dated 12/9/2017, by which, One Time Settlement amount has been determined as Rs.8,22,04,723/-.

4. Thereafter, Bank, vide, letter, dated 6/12/2017, acknowledged the application money of Rs.54,00,315/-, paid by the petitioner and also a further sum of Rs.1,12,00,059/-, representing 20% of the One Time Settlement amount, less application money. Vide, letter, dated 6/12/2017, Bank has informed the petitioner that they would be eligible for an additional incentive of 10% discount, on the One Time Settlement amount, on making payment of remaining OTS amount of Rs.6,62,04,349/-, on or before 31/12/2017. Bank has clarified that the petitioner has to pay Rs.5,79,23,877/-, towards full and final settlement of the petitioner's dues, under the scheme, if the petitioner intends to make payment on or before 31/12/2017.

5. Responding to the request for extension of time, received by the Bank, on 17/4/2018, Bank has informed the petitioner that dues to be cleared on or before 27/4/2018 and requested the petitioner to make the payment, as per the scheme. Bank has expressed its inability to extend the time, as requested by the petitioner. Hence instant writ petition has been filed for a mandamus, directing the Bank to extend time by eight weeks on payment of 12% interest p.a., for the balance amount of Rs.5,79,23,877/-.

6. Record of proceeding shows that on 10/5/2018, Mr.K.Balamurali learned counsel for the respondent Bank has taken notice.

7. On this day, when the matter came up for further hearing, Mr.S.Jayakumar, learned counsel for the petitioner made submissions, in support of the prayer sought for. In addition to the above, he submitted that as per the RBI Guidelines, Bank has obligated to extend time for One Time Proposal.

8. Responding to the above submissions and inviting the attention of this Court to the various writ petitions filed by M/s. Hotel Milestonnex India Private Ltd.,/borrower, Mr.K.Balamurali, learned counsel for the bank submitted that at every stage of the proceedings initiated under the SARFAESI Act, 2002, petitioner/borrower has filed writ petitions and made attempts to protract/stall the proceedings.

9. Placing reliance on a letter, dated 30/4/2018, addressed to the petitioner, learned counsel for the Bank submitted that inasmuch as the offer of OTS proposal itself has been cancelled, the question of issuing mandamus, does not arise. He also submitted that there is no bona fide on part of the petitioner.

10. When attention of the learned counsel for the petitioner was invited to the letter, dated 30/4/2018 and when this Court, observed that the prayer for mandamus does not survive, learned counsel for the petitioner sought permission to withdraw the writ petition.

11. Heard the learned counsel appearing for both parties.

12. Perusal of the orders made in the writ petitions filed by the petitioner/borrower, submitted during the course of hearing of the instant writ petition, shows that when possession notice, dated 7/9/2015, was issued by the Bank, under Section 13 (4) of the SARFAESI Act, 2002, Writ Petition No.5075 of 2016 has been filed for a mandamus, directing the Bank, not to take any action against the petitioner/borrower's schedule property, pursuant to the possession notice, dated 7/9/2015.

13. After hearing the learned counsel for the petitioner, writ petition No.5075 of 2016 has been dismissed, granting liberty to the petitioner to approach the Tribunal, if so advised.

14. Subsequently, when e-auction sale notice, dated 6/2/2017 was issued, fixing e-auction sale of the mortgaged property, on 28/2/2017, petitioner has filed W.P.No.4650 of 2017 for a mandamus, forbearing the respondent Bank from conducting auction. Petitioner therein has also sought for a direction, to consider the OTS proposal, on or before 28/2/2017.

15. After considering the averments, pleadings and taking

note of the decisions (i). Digivision Electronics Ltd., Vs. Indian Bank and Another {2005 (3) L.W.269}, (ii). United Bank of India Vs. Satyawati Tandon and Others {Civil Appeal No.Nil of 2010 SLP (C) No.10145 of 2010, decided on 26/7/2010, and (iii). Keshavlal Khemchand and Sons Private Limited and Others Vs. Union of India and Otheres {2015 (4) SCC 770}, this Court, vide, order, dated 24/2/2017, dismissed the writ petition No.4650 of 2017.

16. Perusal of the order made in W.P.No.31413 of 2016 filed by the petitioner shows that in A.I.R.(S.A) No.274 of 2016, on the file of the Debts Recovery Appellate Tribunal - III, Chennai, a conditional order, to deposit 25% of the amount mentioned in the demand notice, has been passed out of which Rs.1 crore, to be paid, within a period of seven days, from the date of the order and the balance amount should be paid, within 30 days, from the date of order, in the form of Demand Draft, in the name of the Registrar, Debts Recovery Appellate Tribunal, Chennai.

17. Contending inter alia that the petitioner could not deposit the said amount, W.P.No.31413 of 2016 has been filed for a mandamus, directing the Registrar, Debts Recovery Appellate Tribunal, Chennai, second respondent, therein, to extend the time by 60 days, from 22/7/2016, to comply with the conditional order, dated 15/7/2016, so as to enable the petitioner/borrower to deposit a sum of Rs.1 crore.

18. W.P.No.31413 of 2016 has been dismissed, on 26/10/2016. While doing so, a Hon'ble Division Bench of this Court has observed that the said writ petition has been filed only to protract the recovery of proceedings rather complying with the directions of the Debts Recovery Appellate Tribunal.

19. Thus, the Bank has taken steps to recover the amount due and payable, from 2015 onwards, writ petitions have been filed, at each and every stage of the proceedings, to stall/protract the recovery proceedings, and this Court had declined to grant the reliefs prayed for.

20. As early as in 2016, a Hon'ble Division Bench of this Court, in W.P.No.31413 of 2016, has observed that there is no bona fide, on the part of the petitioner/borrower and writ petition filed for extension of time was only to protract the recovery proceedings.

21. Responding to One Time offer made by the petitioner/borrower, Bank has issued a letter, dated 12/9/2017, with a scheme for OTS and that the same is extracted hereunder:-

"State Bank of India has come out with a scheme for One Time Settlement (OTS) of non-performing assets 2017. In this connection, we would like to advise you that your dues to the Bank are eligible for settlement under the SBI OTS 2017 on the following terms and conditions:

(i). Ledger outstanding (excluding accrued interest from the date of NPA) on 31/3/2017: Rs.10,80,06,297.
(ii). Amount of OTS: Rs.8,22,04,723/- (Amount recovered after 31/3/2017 will be adjusted against the OTS amount).
(iii). Application for OTS will be proceeded only on deposit of minimum 5% (Rs.5400315.00) of the ledger outstanding as on 31/3/2017.
(iv). 20% (Rs.16440945.00) of the OTS amount will have to be deposited by you as upfront money within thirty days from the date of sanction of OTS. This would include the amount deposited by you along with the application.
(v). The balance amount can be paid within 6 months from the date of sanction of OTS (the validity period) together with interest @ MCLR + 2%, failing which the OTS sanction will be rendered infructuous.
(vi). However, no interest will be charged, if the entire OTS amount is paid within 3 months from the date of sanction.
(vii). You will be eligible for an additional incentive of 10% discount on the OTS amount, on making payment of the entire OTS amount on or before 31/12/2017.

2. (Where applicable)
Since your case is pending before Court/Lok Adalat/DRT any settlement will be subject to filing of consent term for consent decree/necessary orders from the Court/Loak Adalat/DRT, and this letter is without prejudice to the rights and contentions of the Bank in the said proceedings.
Since you have been issued notice under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, this notice is without any prejudice to our rights to take/continue actions under the Act unless a compromise is settled under the present SBI/OTS 2017 scheme as stated above.

3. Please advise your willingness to settle the

dues by 31/10/2017. Your request for settlement will be processed for acceptance or otherwise on receipt of your communication and deposit of minimum 5% of the outstanding as on 31/3/2017."

22. Subsequently, on 6/12/2017, Bank has also informed the petitioner, as to the demand made, and the remaining amount to be paid on or before 31/12/2017, the last date fixed for payment of the entire OTS amount. Out of the total sum of Rs.8,28,04,723/- agreed upon to be paid by the petitioner/borrower, petitioner has paid a sum of Rs.54,00,315/- + 1,12,00,059/- = Rs.1,66,00,374/-. Admittedly, the petitioner/borrower has failed to make the remaining amount of Rs.5,79,23,877/-, on or before 31/12/2017.

23. Material on record discloses that after four months from the last date 31/12/2017, petitioner seemed to have made a representation, dated 17/4/2018, seeking for extension of time. Bank vide, letter, dated 23/4/2018, has rejected the same. Rejection letter, dated 23/4/2018, is extracted hereunder:-

> "Please refer to your letter dated 17/4/2018 received by us on 19/4/2018 with regard to the OTS - Request for extension of reliefs.
>
> Please refer our Letter No.SAMB/CLO 1/1331 dated 27/10/2017 wherein we have clearly stated that under the SBI OTS 2017 scheme the dues stated therein has to be cleared on or before 27/4/2018. Hence please arrange to make the payment as per the scheme and we are unable to extend the time as requested.

24. Now, after the expiry of the time provided for payment under OTS, petitioner has sought for a mandamus, directing the bank to extend the time by eight weeks, to pay the balance amount of Rs.5,79,23,877/-, with 12% interest p.a.

25. Vide letter, dated 30/4/2018, Bank has rejected the OTS and the same is extracted hereunder:-

> "Please refer to your letter dated 16/9/2017 on the captioned subject. We also wish to draw your attention to our previous letter Nos.SAMB/CLO 1/1053 dated 12/9/2017, SAMB/CLO 1/1331 dated 27/10/2017 and SAMB/CLO 1/1624 dated 6/12/2017 in this regard.
>
> 2. In this connection, please note that

as per the OTS sanctioned, you should have paid Rs.8,28,04,723/- on or before 27/4/2018 against which you have paid Rs.1,66,00,374/- only. As you have not adhered to the terms of payment and the balance OTS amount was not settled as on 27/4/2018, the offer of OTS stands cancelled.

3. This letter is issued without prejudice to our right to proceed further with the legal action including under SARFAESI Act to recover the Bank's dues.”

26. From the above, it could be seen that the Bank has extended the time upto 27/4/2018. Though the learned counsel for the petitioner submitted that letter, dated 30/4/2018, has not been served on the petitioner and had it been done, the petitioner would have challenged the said letter, instead of seeking for a mandamus, and sought for withdrawal of the writ petition, this Court is not inclined to accede to the prayer, for the reason that there is absolutely no bona fide on the part of the petitioner, to discharge the loan amount. Attempt to protract/stall the recovery proceedings, initiated under the SARFAESI Act, 2002, by filing writ petitions, one after another, from the year 2015 onwards has already been recorded by this Court, and details of the same have extracted in the foregoing paragraphs. Averments do not disclose, as to how One Time proposal has to be accepted and kept alive for one year.

27. Be that as it may, Bank has rejected One Time Settlement proposal. At this juncture, this Court deems it fit to consider few decisions, as to whether Courts can direct the Bank to rephase/reschedule payments to be made by a borrower/guarantor, as the case may be.

28. 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."

29. 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."

30. Question of rephasement or rescheduling of payments to be made by the borrower/guarantor, as the case may be, is not the domain of Courts. We do not appreciate the conduct of the petitioner in delaying the recovery of public money. Intention of the legislature is only to speed up recovery of public money. Liability has not been disputed.

31. On the facts and circumstances of the case, and considering the conduct of the writ petitioner/borrower, prayer for withdrawing the writ petition cannot be granted. On the other hand, writ petition deserves to be dismissed, with costs. But we refrain from doing so.

32. With the above observation, writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mvs.

To

+1cc to M/s.Shivakumar & Suresh, Advocate, S.R.No.36507
+1cc to Mr.S.Jayakumar, Advocate in sr.no.37326 (12.07.2018)

W.P.No.11808 of 2018

NA(CO)
CS/14/06/18