

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4/6/2018

C O R A M

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

Writ Petition No.13093 of 2018

P.Senguttuvan

... Petitioner

Vs

The Authorised officer/Chief Manager  
The Karur Vysya Bank Ltd  
Chennai Asset Recovery Branch  
No.1 Padmavathiyar Road  
2<sup>nd</sup> Floor (Off Peters Road)  
Gopalapuram  
Chennai 600 086.

... 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 collect the amount due to them from the petitioner by waiving some portion of interest, entire penal interest and penalty within the time frame fixed by this Court instead of conducting Mega E-Auction.

For petitioner ... Mr.R.Arun Dattan

O R D E R

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

Petitioner, has availed term loan facility, to the tune of Rs.120 lakhs on 31/12/2012, for the purpose of purchasing Sugarcane Harvester, three number of Holland tractors, three numbers of sugarcane infielders and one Mahindra Jeep. Machineries/vehicles along with collateral security of residential property, have been offered as security. Owing to business loss in drought, petitioner could not repay. Bank has issued sale notice, dated 5/5/2018. Contention has been made that Bank has under valued the property at Rs.53 lakhs, though it is worth 3 crores. Explaining the difficulties in payment, petitioner has made a representation, dated 19/5/2017, to waive

panel interest. As the representation has not been considered so far, instant writ petition has been filed for a mandamus, to direct the respondent, to collect the amount due to them from the petitioner, by waiving some portion of interest, entire penal interest and penalty, within a time frame, fixed by this Court, instead of conducting Mega E-Auction.

2. Heard Mr.R.Arun Dattan, learned counsel for the petitioner.

3. 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 judicial 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."

4. 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."

5. Under SARFAESI Act, 2002, Bank has right to bring the secured assets for public auction. Auction notice, dated 5/5/2018 has been issued. Contention of the writ petitioner that Bank has under valued the property, can be raised before the appropriate forum, if any application under Section 17 (1) of the SARFAESI Act, 2002 is filed. Bank transactions are purely contractual. Mandamus cannot be issued to the Bank, to waive a portion of the interest or penal interest, as prayed for. Mandamus prayed for is misconceived.

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/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mvs

To

The Authorised officer/Chief Manager  
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Chennai Asset Recovery Branch  
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