IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2018

CORAM:

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

W.P.No.15881 of 2018
and WMP No.18888 of 2018

B.Chitra ... Petitioner

vs.

1. Assistant General Manger,
Stressed Assets Recovery Branch,
No.377/1, Dr.Nanjappa Road,
Behind N.S.Palaniappan Nursing Home,
Coimbtore - 641 018.

2. The Authorized Officer,
State Bank of India,
Erode Branch,
D-48, State Bank Road,
Erode - 638 001. ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified Mandamus, calling for the records relating to impugned order of the 2nd respondent dated 4.6.2018 in SARB/CBE/2018-19/KVK/102 and quash the same and directing the respondents to consider the representation of the petitioner dated 01.06.2018 by granting three months time to the petitioner to pay the entire outstanding loan amount in Loan Account No.30438554357.

For Petitioner : Mr.V.Rameshvel

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

Petitioner has availed Housing Loan of Rs.52 Lakhs during the year 2008 and agreed to pay the same, with interest at the rate of 13% per annum, by way of equated monthly instalments at Rs.54,561/- for a period of 240 months. According to her, regular monthly payments were made. Due to her ill health and demise of her husband, she could not pay the monthly equated instalments in time and thus, the default occurred.

2. Petitioner has further contended that loan account was declared as Non Performing Asset on 03.08.2011. State Bank of India, Erode, issued notice dated 29.02.2012 under Section 13(2) of the SARFAESI Act, 2002, demanding a sum of Rs.55,43,010/- as on 29.02.2012, with future interest at the contractual rate on the aforesaid amount together with incidental expenses, cost and charges, to be paid within sixty days, failing which, Bank would initiate proceedings, and take such other actions or legal proceedings. Possession notice dated 04.07.2012 under Section 14 of the SARFAESI Act, 2002 was issued, demanding the said sum and symbolic possession of the secured asset was taken. Thereafter, bank issued auction notice dated 26.01.2013, bringing the secured assets for sale on 28.02.2013.

3. Possession notice dated 04.07.2012 issued under Section 13(4) and sale notice dated 26.01.2013, issued under Rule 8 & 9 of Security Interest (Enforcement) Rules, 2002 where challenged in SA No.37 of 2017 before the Debts Recovery Tribunal, Madurai.

4. Petitioner has contended that in I.A.No.224 of 2013 in SA No.37 of 2013, Debts Recovery Tribunal, Madurai granted interim stay of all further proceedings, on condition that the petitioner pays a sum of Rs.16 Lakhs. According to the petitioner, conditional order has been complied with.

5. Thereafter, SARFAESI Application No.37 of 2013 was dismissed on 02.02.2018. Petitioner had not chosen to prefer any appeal. Pursuant to the dismissal of SARFAESI Application No.37 of 2017, dated 02.02.2018, on the file of the Debts Recovery Tribunal, Madurai, Authorized Officer, State Bank of India, Erode, 2nd respondent, issued a fresh sale notice dated 24.04.2018, bringing the secured asset for sale on 29.05.2018. As per the sale notice dated 24.04.2018, the outstanding amount due and payable by the petitioner to State Bank of India, Erode, the 2nd respondent, as on 22.04.2018 is Rs.94,79,214.39p.

6. Though the petitioner was aware of the subsequent sale notice dated 24.04.2018, as she wanted to repay the loan availed, made a representation dated 01.06.2018, for one time settlement. Representation dated 01.06.2018, has been considered and the bank declined to grant time and accordingly, vide letter dated 04.06.2018, rejected the request.

7. Being aggrieved petitioner has sought for a writ of certiorarified mandamus, to quash the said letter dated 04.06.2018 and consequently, prayed for a direction to consider the representation dated 01.06.2018, by granting three months time to repay the entire outstanding amount in loan account No.30438554357.

8. On the above averments, Mr.V.Rameshvel, learned counsel for the petitioner reiterated that given one week time from today, the petitioner would discharge the entire outstanding loan amount of Rs.94,79,214.39p as on 22.04.2018, with interest as on today.

9. Learned counsel for the petitioner also made submissions that there was no proper service of sale notice, upset price was very low, there was under valuation of the secured asset, there was no successful bidder in the auction and such other submissions, assailing the correctness of the sale stated to have been effected by the 2nd respondent bank.

10. Heard Mr.V.Rameshvel, learned counsel for the petitioner and perused the materials available on record.

11. Loan has been availed in the year 2008. Admittedly, there is default. Hence, account has been classified as Non Performing Asset, as

early as on 03.08.2011. Measures have been taken under SARFAESI Act, 2002 for realisation of debts. Perusal of the impugned letter dated 04.06.2018, shows that consequent to the dismissal of SA No.37 of 2013 dated 02.02.2018, bank has issued a fresh sale notice dated 24.04.2018, and that the same is stated to have been served on the petitioner, as well as on her husband on 26.04.2018. As per the said letter dated 04.06.2018, she has not responded to the e-auction sale conducted on 29.05.2015.

12. According to the bank, secured asset has been sold for Rs.117 Lakhs and that sale confirmation has also been communicated to the auction purchaser. Impugned letter also shows that bank had initiated proceedings for taking physical possession through an Advocate Commissioner, appointed based on the orders passed by the learned Chief Metropolitan Magistrate, Erode dated 10.12.2012 and physical possession was taken on 23.01.2013. As per Clause 5 of the said letter dated 04.06.2018, the property is in actual custody of the bank.

13. Contention as to whether there is any violation of statutory provisions in the matter of conducting the sale and further proceedings, cannot be adjudicated in the instant writ petition, unless and until, there is a challenge to the same in the manner known to law, before the appropriate forum. Further as per letter dated 04.06.2018, actual physical possession had already been taken.

14. On the contention as to whether, the bank had hurriedly brought the property for auction, despite the request of the petitioner dated 01.06.2018 and as to whether OTS, proposed by

the petitioner in the said letter dated 01.06.2018, to be accepted by the bank, time and again, this Court had held that in the matter of an offer to settle the outstanding amount, as One Time Settlement and the response by the bank, is contractual. Courts cannot issue a writ of mandamus, directing the bank to accept the One Time Settlement, as proposed. In contractual matters, Court has no power to issue directions to the bank, for rescheduling/rephasing, repayment. On the above aspect, we deem it fit to consider the following decisions.

(a) After considering a catena of decisions on the legal right of a person to seek for a 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.
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> 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.
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> 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."

(b) 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, a Hon'ble Division Bench of this Court, at paragraph No.42, 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".

At paragraph No.46, in M/s.Digivision Electronics Ltd., Retistered 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, the Hon'ble Division Bench further held as follows:

> "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."

15. As per the decisions of this Court in Tamilnadu Industrial Investment Corporation Vs. Millenium Business Solutions Private Limited, reported in 2004 (5) CTC 689 and M/s.Digivision Electonics 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, Court cannot compel the bank for any rephasement or One Time Settlement.

16. On the submission that the petitioner is willing to discharge the entire outstanding amount of Rs.94,79,214.39p as on 22.04.2018, with interest as on today, within one week from today and therefore, the impugned letter, to be interfered with, material on record discloses that bank had already sold the property and as per the letter dated 04.06.2018, sale confirmation has been communicated to the auction purchaser. No sooner sale confirmation is made, right of the auction purchase accrues. Therefore, considering the abovesaid fact, we cannot accept the plea made by the petitioner. However, under the statute, there is a right to question the auction and the subsequent confirmation, before the appropriate forum and seek for suitable interim orders. With the above observation, writ petition is dismissed. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant General Manger,
   Stressed Assets Recovery Branch,
   No.377/1, Dr.Nanjappa Road,
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   Coimbtore - 641 018.

2. The Authorized Officer,
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   Erode Branch,
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   Erode - 638 001.

+1cc to Mr.V.Rameshvel, Advocate, S.R.No.41151

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MG(CO)
CS/02/07/18