IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/7/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.19203 of 2018
a n d
W.M.P.No.22601 of 2018

M.A.M.Spinning Mills
rep. By its Proprietor
M. Alli
No.678/5 Murugukattu Valasu Olapalayam
Kangayam
Thirupur. ... Petitioner

Vs

The Authorised Officer
City Union Bank Ltd
No.24-B Gandhi Nagar
Kumbakonam. ... Respondent

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus directing the respondent to accept the sum of Rs.2,92,50,555/- less Rs.25 lakhs paid on 27/4/2018 under One Time Settled amount under letter dated 3/5/2018 and consequently release the mortgage over the properties.

For Petitioner ... Mr.G.Appavu

O R D E R

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

M.A.M.Spinning Mills, represented by its Proprietor, availed cash credit facility, to the tune of Rs.2.10 crores. According to the Company, Rs.1 crore has been paid. For default, Bank has classified the account as Non-Performing Asset. Bank has issued demand notice, dated 27/4/2017, under Section 13 (2) of the SARFAESI Act, 2002, demanding a sum of

Rs.3,65,80,134/-. Being aggrieved by the measures taken, petitioner has filed S.A.No.341 of 2017, before the Debts Recovery Tribunal, Coimbatore. Petitioner has contended that in the petition, for stay of auction proceedings, there was a direction to pay Rs.1,96,00,000/- (Rs.98 lakhs + Rs.98 lakhs), within a stipulated time. On revision, High Court, on 19/12/2017, reduced the said sum to Rs.70 lakhs.

2. On the request of the petitioner for OTS, Bank has issued a letter, dated 16/3/2018, which reads thus:-

> We refer to your letter dated 16/3/2018 requesting to settle your dues under the One Time Settlement of Rs.2,92,50,555/- (in which Rs.60,00 lakh to be paid on or before 21/3/2018 and balance to be paid before 15/4/2018). You are also requesting to release the house properties on payment of Rs.100.00 lakh.
>
> The said request was placed before our Committee of Executives and the same has been approved with the terms as under:
>
> 1. First instalment of Rs.60.00 lakh to be paid on or before 21/3/2018.
> 2. Balance OTS amount of Rs.232.51 lakh to be paid on or before 16/4/2018.
> 3. On remittance of Rs.100.00 lakh, house property documents will be released.
> 4. Time is the essence of this settlement. Hence the committed amount has to be paid on or before the stipulated time. Any failure either in part or in full, will make the entire settlement null and void and automatically cancelled, Bank shall proceed further for recovery of their entire dues.
>
> Please acknowledge and honour the commitment on or before the stipulated time line.
>
> In token of having accepted the above terms, the duplicate copy of this letter be returned, with due acceptance by all concerned.”

3. Petitioner has contended that he has deposited a sum of Rs.22 lakhs under OTS scheme, dated 16/3/2018. To discharge the OTS amount, petitioner has entered into an agreement, dated 30/4/2018, with M/s. Cross Finvest, No.699, I Floor, Vinayas Arcade, Jayanagar, V Block, Bangalore 560 045, and also paid Rs.5,83,333/-. Lender has promised the release of fund, within ten days, as per the agreement. For the reasons best known, lender has released the sum of Rs.5 crores.

4. On the further request, dated 2/5/2018, Bank has refused the OTS payment as hereunder:-

> "We refer to your letter dated 2/5/2018 received by us on 2/5/2018, requesting to extent the time line of OTS till 22/5/2018.
>
> The said request was placed before our Committee of Executives and the same has been approved as a special case with the terms as under:
>
> 1. The balance OTS amount of Rs.267.51lakh (Rs1292.51 lak - Rs.25.00 lakh) to be paid on or before 22/5/2018 along with delayed period interest at 12.00% from 22/3/2018.
> 2. on receipt of entire OTS amount, the mortgaged properties (other than the sold property) will be released.
> 3. Time is the essence of this settlement. Hence the committed amount has to be paid on or before the stipulated date. Any failure either in part or in full, will make the entire settlement null and void and automatically cancelled, Bank shall proceed further for recovery of their entire dues.
>
> Please acknowledge and honour the commitment on or before the stipulated time line.
>
> In token of having accepted the above terms, the duplicate copy of this letter be returned, with due acceptance by all concerned."

5. Now, the Bank has issued an auction notice, dated 3/7/2018, fixing the sale, of properties 1 and 2, on 27/7/2018, for auction. On the above averments, petitioner has sought for a writ of mandamus, directing the respondent Bank, to accept the sum of Rs.2,92,50,555/-, less than Rs.25 lakhs paid, on 27/4/2018, under One Time Settlement letter, dated 3/5/2018 and consequently, prayed for a direction to the Bank, to release the mortgage over the properties.

6. Heard Mr.G.Appavu, learned counsel for the appellant and perused the materials available on record.

7. As per the One Time Settlement letter, dated 16/3/2018, Bank has agreed to settle a sum of Rs.2,92,50,555/-, as full and final settlement. First Instalment of Rs.60 lakhs, to be paid on or before 21/3/2018. Balance OTS amount of Rs.232.51 lakhs to be paid on or before 16/4/2018. On remittance of Rs.100 lakhs, house property documents would be released. Bank in its

OTS dated 16/3/2018 has also made it clear that time is the essence of the settlement. Hence, the committed amount has to be paid on or before the stipulated date. Any failure either in part or in full, will make the entire settlement null and void and automatically cancelled. Bank shall proceed further, for recovery of their entire dues.

8. Petitioner has not made payment, as per the OTS, dated 16/3/2018. However, chosen to sent another letter, dated 2/5/2018, seeking for extension of time length of OTS till 22/5/2018. Said request has been considered by the committee of executives of the Bank, on 3/5/2018, and without prejudice, Bank has revised the OTS payment. A sum of Rs.267.51 lakhs to be paid on or before 22/5/2018 along with delayed period interest, at 12%, from 22/3/2018. On receipt of the entire OTS amount, mortgaged properties (other than the sold property would be released). Here again, time is the essence of the settlement. Hence the committed amount has to be paid on or before the stipulated date. Any failure either in part or in full, would make the entire settlement null and void and automatically cancelled, Bank shall proceed further for recovery of their entire dues.

9. Though the petitioner has contended that he has made payment of Rs.25 lakhs, as per clause (1) of the Settlement, dated 3/5/2018 and therefore, be permitted to pay the balance amount and for that purpose, mandamus be issued, directing the respondent, to accept a sum of Rs.267.51 lakhs, the same cannot be accepted for the simple reason that as per the revised One Time Settlement, the said sum of Rs.267.5 lakhs, has to be paid 22/5/2018, along with interest at 12%, from 22/3/2018. For the failure in making the payment, as per the terms of the One Time Settlement, dated 3/5/2018, borrower has now issued auction notice, dated 3/7/2018, fixing the sale, of properties 1 and 2, on 27/7/2018, for auction. Petitioner has not discharged his obligation.

10. 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 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."

11. A Hon'ble Division Bench 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, 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."

12. 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/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

mvs.

To

The Authorised Officer
City Union Bank Ltd
No.24-B Gandhi Nagar
Kumbakonam.

+1cc to Mr.G.APPAVU, Advocate, S.R.No. 50274

W.P.No.19203 of 2018

TR(21/08/2018)