IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.28800 of 2016

Saroja Ammal .. Petitioner

Vs.

1.The Presiding Officer,
The Debt Recovery Tribunal III,
Chennai.

2.Indian Overseas Bank,
Thanjavur Main Branch,
Rep. by its Chief Manager,
No.1604, South Main Road,
Thanjavur - 613 009.

3.M/s.Sri Sayee Associates, A Partnership Firm
Rep. by its Partners
Mr.D.Murugesan
No.3/2A Periyar Nagar, 4th Street
Medical College Road, Thanjavur.

4.Murugesan

5.M/s.Sri Sayee Enter Prises,
Rep by its Proprietor Mr.D.Murugesan
No.19 Rajaji Road,
Srinivasapuram, Thanjavur.

6.D.Vimala .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned letter of the 2nd respondent dated 09.03.2016 and quash the same as illegal ultravires and unconstitutional and direct the 2nd respondent to give effect to the order of the 1st respondent namely Debt Recovery Tribunal III, Chennai made in Second Appeal No.336/2014 dated 22.01.2016.

For Petitioner : Ms.S.Vijayalakshmi

For R4 to R6 : No Appearance

For R3 to R5 : Not Ready in Notice

ORDER

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

Inviting the attention of this Court to the order of the Tribunal, directing the petitioner to deposit a sum of Rs.1.3 crores to the credit of the loan account and thereafter to continue for negotiations with the bank for payment of the balance amount of Rs.1.25 crores together with subsequent interest, costs and charges, Ms.S.Vijayalakshmi, learned counsel for the petitioner submitted that the said amount of Rs.1.25 crores, had been credited to the loan account. Vide impugned letter dated 09.03.2016, bank has rejected the One Time Settlement without any reason.

2. Except the above, no other submission has been made. Proceedings dated 22.01.2016, in S.A.No.336 of 2014, between the M/s.Sri Sai Associates and another Vs. A.O.Indian Overseas Bank, Thanjavur Main Branch, by which DRT-III, Chennai, directed the petitioner to deposit a sum of Rs.1.3 crores, to the credit of the loan account and continue negotiations with the bank for repaying the balance amount stated supra is extracted hereunder:-

"TRUE EXTRACT OF PROCEEDING DATED 22.01.2016

S.A.No.336/2014 22.01.2016

Both sides are present. This SA is filed by Sri Sayee ssociates, a partnership firm represented by its partners, Murugesan and another partner by name Mrs.Saroja and the second applicant is Sri Sayee Enterprises, a Proprietary concern represented by its Prorietor Murugesn. Another SA No.103/14 challenging the Possession Notice is also pending enquiry. Today a memo is sought to be filed by the counsel representing the second partner Mrs.Saroja stating therein that in Writ Petition moved before Hon'ble High Court, Madras a direction is given seeking for consolidation of all the matters relating to the applicants herein and is posted to 10.02.2016 for filing PA by the applicant bank. It is the case of the second partner Mrs.Saroja that she is making all attempts for discharge of the debt by entering into OTS with the bank and in fact her earlier offer for settlement has been rejected by the applicant bank as too low for their consideration, against which the applicants now would like to improvise their offer for settlement.

Notwithstanding the same, the interim condition of payment of Rs.50 lakhs to the credit of loan account has been duly complied and the said partner Mrs.Saroja is now willing to deposit a sum of Rs.30 lakhs and FDR for Rs.1 crore which she would like to pay to the bank and negotiate with them for the remaining amount which would be a sum of Rs.1.25 crores together with subsequent interest in terms of the sale notice amount of Rs.3.05 crores, after duly taking into consideration the payment of Rs.50 lakhs in compliance of interim orders of this Tribunal plus Rs.1.3 crores being now offered to be paid to the respondent bank.

Heard. Permitted. In the result, the said partner, Mrs.Saroja is permitted to deposit the said amount of Rs.1.3 crores to the credit of the loan account and continue with their negotiations for the remaining balance amount of Rs.1.25 crores together with subsequent interest, costs and charges and report about the settlement. Call on 10.02.2016 for reporting compliance.

Copy of this order may be made available to all the parties."

3. According to the petitioner, a sum of Rs.1.25 Crores has been credited as per the order. Perusal of the proceedings dated 22.01.2016 shows that the DRT-III, Chennai, has only permitted the petitioner to negotiate with the bank for payment of balance amount. Tribunal cannot direct the bank to enter into any one time settlement.

4. Banking transaction is purely contractual. Court cannot direct any party to the transaction, to arrive at a settlement in the manner as proposed, by the other, resettling or rescheduling of the loan account is purely contractual.

5. 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."

6. In view of the above discussion and decision, there is no merit in the writ petition, warranting interference. Accordingly, the Writ Petition is dismissed. No Costs.

Sd/-
ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

dm

To
The Presiding Officer,
The Debt Recovery Tribunal III,
Chennai.

+1 cc to Mr.D.Rajagopal, Advocat SR.NO. 19118

+1 cc to Mr.F.B.Benjamin George, Advocate SR.NO. 19737

W.P.No.28800 of 2016

NMI(CO)
JK 16/04/18