IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.10.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

WP.No.5320/2020 & WMP.No.6269/2020

M/s.Telescren Communication Pvt.Ltd
rep.by its Managing Director
R.Ravichandran .. Petitioner

Versus

Indian Overseas Bank,
large Advances Branch
Irungattukottai 602 105.
Sriperumbudur Taluk
Kancheepuram Taluk. .. Respondent

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Declaration declaring that the concessional rate of -0.75% BPLR approved by the respondent Bank will date back to the date of sanction and cannot be applied midway, as the decision was pursuant to the recommendation in the Sanction Letter dated 10.11.2005.

For Petitioner : Mr.J.Srinivasa Mohan for M/s.TVJ Associates
For Respondent : Mr.Y.T.Aravind Ghosh

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

(1) By consent, the writ petition is taken up for final disposal and is disposed of by this order.

(2) The petitioner was sanctioned with a loan of Rs.2.28 Crores for the purchase and erection of Windmill and the said amount is to be repaid in 28 equal total instalments at the rate of Rs.8.14 Lakhs per instalment. The petitioner / borrower also insisted that it was availing the loan only if the rate of interest was BPLR-1% and accordingly, in the Sanction Letter, the following remark has been made:-

> ''Concessional interest rate of BPLR-1% is recommended to CO which would be applicable only on approval from Central Office.''

(3) The petitioner has commissioned the Windmill on 28.09.2005

and however, the loan was disbursed six months later on 28.03.2006. Though the petitioner was made to believe that BPLR-1% will be provided, it is not so and the respondent - Bank also did not take immediate steps to finalise the rate of interest ; but ultimately reduced the same to 0.75% with effect from 01.04.2009 only. However, the petitioner would plead that it should relate back to the date of sanction or the date of disbursement of the loan amount in the year 2006.

(4) It appears that the petitioner had committed default in payment of the dues and accordingly, the respondent - Bank filed OA.No.332 of 2013 on the file of the Debts Recovery Tribunal-III, at Chennai for recovery of a sum of Rs.53,22,146/- together with interest @ 14.75% per annum together with monthly rest compounded interest along with penal interest in respect of the facilities availed. The petitioner and the Directors/Guarantors had filed the counter affidavit taking the stand that though the interest rate was reduced @ 0.75% per annum with effect from 01.04.2009, the same has not been done with retrospective effect. A counter claim has also been filed by the petitioner taking the said stand.

(5) The Tribunal had taken into consideration the averments in the Original Application as well as the counter claim and in paragraph No.9, had observed as follows:-

> ''9. In view of the circumstances and pleadings between the parties and after careful consideration of the counter claim of the defendants, it is evident that while the defendant is admitting to his default of non repayment of the quarterly installments of the loan availed for the Wind Mill Project has been harping upon the same issue of interest time and again and has willfully not made the payments and contributed to the account being classified as NPA. All the four claims made by the defendants are all a wishful contentions to gain leverage with the applicant bank for a negotiation ground and are not supported by any evidence or pleading leading to fact. It is demonstrated that the insurance issue is a distinct contract between the parties and the insurance company and the repudiation of the claim has no bearing for the discharge of the loan and if at all if the defendants are aggrieved by the refusal of the claim by insurance company, they ought to have agitated the same before an appropriate forum for redressal and not fall upon the bank who is a secured creditor and not even a facilitator for the insurance company. The further claim of Rs.25,62,000/- towards interest as due against

the funds due from the Andhra Pradesh Government is also only wishful claim on the ground that the respondent bank did not issue NOC for releasing the same which are not established by cogent evidence confirming there in that owing to the non release of said funds, this was the amount that was incurred by the defendants especially when there is a specific denial by the applicant bank that there was no delay in their part and had given the said no objection in accordance to their circulars or RBI guidelines.''

(6) In the light of the said reason, the Counter Claim filed by the petitioner before the Tribunal came to be rejected and the Tribunal, vide order dated 03.07.2019, allowed the Original Application with directions.

(7) The petitioner, aggrieved by the allowing of the Original Application and dismissal of the Counter Claim, filed an appeal in AIR No.18 of 2018 on the file of the Debts Recovery Appellate Tribunal at Chennai on 03.01.2018. Nearly three months thereafter, the petitioner had filed a Memo dated 29.04.2018 and it is relevant to extract the same:-

''MEMO FILED BY APPELLANTS

1.I am the 2nd appellant and Director of 1st appellant. This litigation, thrust upon us, does not pertain to any loan default. It primarily revolves around the Rate of Interest.

2.We are not the litigant. The case has been thrusted on us. We have been only defending the case. Our counter claim filed in DRT and various other correspondences from Branch head to the CMD were only to bring facts to the knowledge of present officials concerned for favourable considerations.

3.As ease of doing business is the norms of the day we requested Bank not to keep out office locked condition with years of litigations.

4.The Bank has agreed to settle out of the court. Hence, we prefer not to press this present appeal, even before the time granted by the Tribunal to make pre-deposit comes to an end.''

(8) Prior to the filing of the said Memo, the petitioner as well as one of the Directors, had filed WP.No.11202 of 2018, praying for issuance of a writ of ceritorari, calling for the records relating to the order dated 05.04.2018 made in IA.No.98/2018 in AIR No.18 of 2018. A Division Bench of this Court, vide order dated 28.04.2018, has dismissed the said writ petition.

(9) It is brought to the knowledge of this Court that in the light of the above cited Memo dated 29.04.2018, the appeal in

AIR No.18 of 2018, came to be withdrawn and liberty was granted to the petitioner to settle the issue with the respondent - Bank.

(10) Now, the petitioner came forward to file the present writ petition, stating among other things that though the loan was sanctioned on 10.11.2005, the amount was not disbursed and despite a positive recommendation for the concessional rate of BPLR-1% to the petitioner Company which would be applicable only on approval from the Central office, the concessional rate of interest of 0.75% was made applicable only from April 2009 and not from the date of sanction, if not, at least from the date of disbursal of the loan amount.

(11) The primordial submission made by the learned counsel for the petitioner is that once the approval is granted though with regard to the higher rate of interest, it should relate back to the date of recommendation or sanction of the loan and the said issue cannot be adjudicated by the Debts Recovery Tribunal in exercise of powers under the Recovery of Debts and Bankruptcy Act, 1993.

(12) Per contra, the learned counsel for the respondent - Bank would submit that in the counter affidavit in OA.No.332 of 2013 as well as in the Counter Claim, the said stand was taken by the petitioner herein, who was arrayed as a respondent and in paragraph No.9, the Tribunal has repelled the said contentions and dismissed the Counter Claim and though the petitioner filed an appeal in AIR No.18 of 2018 on the file of the DRAT at Chennai, has withdrawn the same by filing a Memo dated 30.04.2018 with a liberty to settle the issue with the Bank and therefore, it is not open to the petitioner to contend that DRT lacks jurisdiction to decide the issue. It is the further submission of the learned counsel for the respondent - Bank that since the claim of the petitioner revolves around performance of the Contractual obligations by the respective parties, the same cannot be adjudicated by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India and would further add that the petitioner is in the habit of adopting dilatory tactics to evade or delay the recovery of the loan sanctioned by the respondent - Bank and hence, prays for dismissal of this writ petition.

(13) This Court has considered the rival submissions and also perused the materials placed before it.

(14) Insofar as the jurisdictional issue is concerned, as rightly contended by the learned counsel for the respondent-Bank, the petitioner did take such a stand in the Counter affidavit filed in OA.No.332 of 2013 as well as in the Counter Claim and the Counter Claim came to be rejected by the Tribunal by citing reasons in paragraph No.9 of the order and ultimately, the Original Application was allowed with certain directions. Admittedly, the petitioner, challenging the allowing of the Original Application and rejection of the Counter Claim, filed

an appeal in AIR No.18 of 2018 on the file of DRAT at Chennai, and on filing a Memo dated 30.04.2018 [contents extracted supra], the appeal came to be dismissed as withdrawn with a liberty to settle the issue with the Bank and thereafter, the petitioner made a complete turn around and came forward to file this writ petition raising the very same issue and requires this Court to adjudicate the said issue.

(15) It is also a well settled position of law that the objection as to the jurisdiction should be raised at the earliest point of time and though the petitioner raised the said issue in the counter affidavit as well as in the Counter Claim, had suffered an adverse order and despite filing an appeal challenging the said order, the petitioner chose to withdraw the said appeal with a liberty to settle the issue with the Bank and as such, the petitioner cannot make a complete turn around and raise the very same issue once again by filing this writ petition.

(16) Be that as it may, there is a contractual obligation in the form of various Agreements executed between the parties for availment of the loan and the interpretation of the terms of the Contract would not fall within the realm of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India and that apart, this Court cannot re-write the Contract in exercise of its Special Original Jurisdiction. In the considered opinion of the Court, the points urged by the learned counsel for the petitioner lack merit and substance.

(17) In the result, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP
To
Indian Overseas Bank,
large Advances Branch
Irungattukottai 602 105.
Sriperumbudur Taluk
Kancheepuram Taluk.

+1cc to M/s.TVJ Associates, Advocate, sr. no.35102

WP.No.5320/2020

VGII(CO)
RMP(03/12/2020)