

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.12716 and 12718 of 2021

W.P.No.12716 of 2021

1 M/s.Amaravathi Spinning Mills
(RJPM) Pvt.Ltd Rep.by its Director
Mr.S.Murugan Having its Office at No.1-B Doshi
Residency 17 Dhandapani Street T.Nagar
Chennai- 600 017.Petitioner

Vs

1 The Registrar
Debts Recovery Tribunal
Coimbatore- 641 018.
2 The Authorized Officer
State Bank of India Stressed Assets
Management Branch 1112 Raja Plaza
Avinashi Road Coimbatore- 641 037.Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus or direction to extend the time till the lockdown is lifted by the Government of Tamil Nadu due to the pandemic to deposit the sum of Rs.5.00 Crores to the 2nd Respondent bank pursuant to the order passed in I.A.No.1453 of 2021 in S.A.No.344 of 2021 dated 19.05.2021 by considering the petitioners representation dated 30.05.2021 and for consequential order.

W.P.No.12718 of 2021

M/s.S.Sri Venkatramana Paper Mills Pvt. Ltd.,
rep.by its Director,
Mr.S.Murugan,
having office at No.1-B, Doshi Residency,

17, Dhandapani Street,
T.Nagar, Chennai 17

...petitioner

Vs

1 The Registrar
Debts Recovery Tribunal
Coimbatore- 641 018.

2 The Authorized Officer
State Bank of India Stressed Assets
Management Branch 1112 Raja Plaza
Avinashi Road Coimbatore- 641 037.

...respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus or direction to extend the time till the lockdown is lifted by the Government of Tamil Nadu due to the pandemic to deposit the sum of Rs.15.00 Crores to the 2nd Respondent bank pursuant to the order passed in I.A.No.1449 of 2021 in S.A.No.342 of 2021 dated 19.05.2021 by considering the petitioners representation dated 30.05.2021 and for consequential order.

For Petitioners : Mr.V.Raghavachari, in both wps
for Mr.B.Jayaprakash
For Respondents : Mr.M.L.Ganesh, in both wps
for 2nd respondent

COMMON ORDER

(made by the Hon'ble Chief Justice)

The petitions are completely misconceived and judicial pronouncements not applicable to the facts have been cited to obtain an undue advantage by admitted borrowers who have failed to repay the respondent bank and has even failed to honour the one-time settlement (for short, OTS) terms offered by the bank. The excuse proffered is the pandemic.

2. The petitioners say that even if the petitioners are offered a few months' time to comply with the OTS terms, it may be possible to pay off the amounts demanded by the bank. The petitioners claim that they run export businesses and almost the entire export industry has been completely shut for the last 16 months or so with little prospect of the business reviving in the immediate future. The petitioners say that in order to

ensure that the debts are discharged, the petitioners need some time to arrange their affairs so as to give a closure to the unsavoury relationship with the bank.

3. When the petitions were received, an order was made on June 16, 2021 that the bank should take a lenient view, considering the present circumstances. However, the order also recorded that, ordinarily, the court should not interfere in such matters and grant extension of time to the petitioners before it since identical terms are extended by banks such as the State Bank to several similarly placed borrowers and it would be unfair to the rest of the borrowers if time were to be extended for one borrower merely because it had approached the court.

4. It is in such light that the bank was left free to consider the matter, with a request to take a lenient view and with the observation that if the terms of the OTS were to be modified, they should be modified in respect of all constituents and not only for the present petitioner.

5. There is no doubt that the authority available to a High Court under Article 226 of the Constitution is almost limitless. However, the discretion that ought to be exercised should be within accepted parameters and on the basis of judicially recognised principles. There is no doubt that Article 226 of the Constitution can even be a breakdown machinery for an urgent civil dispute to be adjudicated thereunder when civil courts are shut down, as during the pandemic, and there is no other remedy available. However, ordinarily, Article 226 of the Constitution is treated as a provision invoked in the public law domain. The very wording of such provision, including the last five words thereof, makes it possible for every form of injustice to be redressed. But constitutional courts exercise a self-imposed restraint and do not allow orders as diktats to run riot.

6. The case of the petitioners is that the OTS terms offered to the petitioners on or about October 20, 2020 required five per cent of the proposed settlement amounts to be tendered along with the applications for availing of the benefit under the scheme. The OTS scheme envisaged that if the five per cent of the total OTS amount was tendered and the borrower applied for the benefit thereunder, the matter would be forwarded by the relevant branch to the higher authorities of the State Bank for a case-to-case study before according sanction. Once sanction was granted, the borrower had then to pay 10 or 15 per cent of the OTS amount within a short time and the balance as per the rather generous terms indicated by the bank.

7. The petitioners paid the initial amounts and the petitioners' applications to be permitted to avail of the OTS benefit were sanctioned by the bank and due notices of the relevant sanctions were communicated to the petitioners. It was at such stage that the petitioners could not make the second tranche of payment of about 10 to 15 per cent of the settlement amounts for the petitioners to avail of the benefit under the scheme and pay a much reduced amount than what the bank claimed to be due in the relevant account or accounts after applying the contractual interest payable therefor.

8. Even if it is assumed that there are justifiable grounds for the petitioners being unable to pay, it must be appreciated that the matters pertain to private contracts between the banker and its constituents and it is for such parties to agree to a settlement, whether individual or generic. Since the terms offered to the petitioners herein in October, 2020 were a part of a scheme that had been introduced for a larger section of the constituents of the bank, with individual approvals being required in each case, it would be unfair for the duration of the scheme or the time to make payments thereunder to be enlarged for one constituent who has approached the court and not confer the same benefit to another constituent who has not come to court. It is for such reason that the bank was required to consider the matter and the order of this court even required the bank to take a sympathetic view.

9. The stand evident from the bank's counter-affidavit is that it cannot or does not intend to give any further latitude to the petitioners. However unjustified it may appear to the court or to the petitioners, the bank is entitled to take such stand in its commercial wisdom. There may have been several other borrowers facing greater hardship than the petitioners herein; other borrowers may have suffered greater prejudice and sacrificed more to adhere to the terms of the OTS. The court is not armed with the facts as to how many borrowers of the petitioners' ilk complied with the OTS terms and in what circumstances or after facing what nature of adversities as a result of the pandemic.

10. Oftentimes, the misplaced sympathy of courts in exercising discretion without being aware of the surrounding circumstances or the ground realities or even the domain expertise lead to greater injustice. This is particularly so when the court orders a compassionate appointment when there is no provision therefor or the court requires the reconsideration of a request when the generic request has been rejected in every other case. There is no law nor any equitable principle that merely because a defaulter has come to court to invoke the imaginary mercy jurisdiction of the court, the court would

sympathise with the litigant and make an exception in its case without extending it to others similarly situated. Courts fall prey at times to persuasive abilities of counsel and the system goes awry when heavyweight counsel bring their persuasion to weigh on the judge. There are also instances of the judge-lawyer nexus that is scarcely referred to but, unfortunately, exists. In its holiest form, it is a result of the familiarity that is built over a period of time. In its less prevalent but most vicious and deleterious form, it has its roots in favouritism and even more undesirable grounds. Judges also fall prey to mild and extreme forms of bullying or quickly cave in to conceal their inadequate grasp over the subject or gloat in a false sense of altruism, unmindful of the relevant considerations or the possible adverse impact on a larger section for doing good to one individual.

11. The petitioners rely on a judgment rendered by the Punjab and Haryana High Court while extending the time for payment under an OTS scheme in view of the difficulties faced by the borrower before that court as a result of the pandemic. However, the facts which culminated in the Punjab and Haryana High Court exercising discretion in favour of the borrower in that case are quite different from the facts here. In that case, the entire payment under the OTS scheme or offer ought to have been made sometime in 2018. Some extension was given and the matter also remained pending in court at a time when the court was not functioning in full steam in the midst of the lockdown. What further weighed with the Punjab and Haryana High Court was that in certain OTS cases, the time to make the payment had been enlarged from March 31, 2020 to June 30, 2020 and even to September 30, 2020, after the lockdown came to be imposed towards the end of March, 2020.

12. The order of the Punjab and Haryana High Court in Civil Writ Petition No.5518 of 2020 (O&M) dated September 22, 2020 (Anu Bhalla vs. District Magistrate, Pathankot) has been carried by way of special leave petition by the secured creditor in that case. On February 15, 2021, the Supreme Court issued notice. The relevant part of the short order of the Supreme Court needs to be seen:

"Issue notice only on the aspect of directing the respondent to pay the balance amount of Rs.21 Lakhs as per the terms of OTS along with interest at the rate of 13.7% from 30.08.2018."

13. Since the order does not record the submission made on behalf of the secured creditor, it is not clear as to whether the secured creditor in that case was willing to receive the payment along with the interest as indicated in the order. Again, even if it is assumed that the secured creditor may have been steadfast in opposing any enlargement of time being granted

to the borrower in that case, it must not be missed that the authority under Article 142 of the Constitution permits the Supreme Court - and only such court - to make an order that it deems fit in the interest of justice which may be contrary to the agreement between private parties in a private domain or otherwise contrary to the express provisions of any statute. There is good reason why such extraordinary jurisdiction is left only to one court in the country.

14. It is evident that at the time that the OTS terms were extended to these petitioners, the first surge of the pandemic was on the wane. By the end of October, 2020, the severe restrictions imposed under the original lockdown had been considerably eased though pre-lockdown normal life may not have resumed. The timing of the offer was such that the bank is deemed to have taken into account the difficulties faced by the business entities as a result of the pandemic and the lockdown. Indeed, the tenor of the terms would suggest the same, since only five per cent was required to be tendered as application money and no more than 15 per cent thereafter to avail of the benefit under this scheme. These were terms that were more lenient than the OTS terms usually offered by nationalised banks and the entire consideration of the bank may have been based on the difficulties faced by business entities during the lockdown. If some of the other constituents, despite facing greater difficulties, did pay or may have paid in accordance with the terms offered - regarding which there is no material before this court - there is no reason why an exception should be carved out especially for the petitioners merely because they are before the court. Equally, there may be hundreds of other similarly placed borrowers who, like the petitioners, may not have been able to take advantage of the most charitable terms offered by the bank and have merely rued their misfortune instead of approaching this court or any other. There is no good reason why such other borrowers, who could not avail of the lenient terms because of the financial difficulties faced by them, should not be extended the courtesy that the petitioners demand only because they are not before this court and the petitioners are.

15. It will still be open to the respondent bank, considering the hardship faced by businesses and industries across the field during the pandemic, particularly export-oriented industries who have no avenues to sell or transport their products. But it is for the bank or the State in its parens patriae role to come to the aid of the industry, the court ought not to carve out an exception in an individual case as that would be misguided sympathy and not in tune with the standard required to be maintained under Article 226 of the Constitution.

16. For the reasons aforesaid, the petitioners' extraordinary prayer cannot be acceded to despite the sympathy of the court being with the petitioners. W.P.Nos.12716 and 12718 of 2021 are dismissed. There will, however, be no order as to costs. Consequently, W.M.P.Nos.13514 and 13519 of 2021 are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

1. The Authorized Officer
State Bank of India Stressed Assets
Management Branch 1112 Raja Plaza
Avinashi Road Coimbatore- 641 037
2. The Registrar
Debts Recovery Tribunal
Coimbatore - 641 018

W.P.Nos.12716 and 12718 of 2021

SR-II(CO)
RG(13/07/2021)



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