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Court : Chennai

Decided On : Jun-14-2010

Judge : B.Rajendran, J.

Acts : Constitution Of India - Article 226

Appeal No. : Writ Petition No.12920 of 2007 and M.P.Nos.1 to 3 of 2007

Appellant : S.Chockkalingam ..

Respondent : The Chief General Manager State Bank of India, and ors.

Advocate for Def. : Mr.K.Sankaran, Adv.

Judgement :

1. The petitioner, who is a defaulter in the payment of amount due to the Bank had come forward with this writ petition.
2. The petitioner had committed default in the payment of amounts due to the Bank, the Bank had instituted suit before the Debt Recovery Tribunal, Chennai and the same was subsequently transferred to Debt Recovery Tribunal, Coimbatore in T.A.No.1370 of 2002. The petitioner had approached the Bank for One Time Settlement under OTS scheme and as per the same, he was permitted to remit a sum of Rs.1,05,98,428/- as against the outstanding of Rs.1,71,00,428.78p with condition to pay Rs.75 lakhs on or before 30.06.2006, the

balance amount of Rs.30,98,428/- on or before 31.03.2007, 10.25% interest for payment of the compromise amount and in the event of default, entire dues with upto date interest will be payable to the Bank before the Debt Recovery Tribunal. Though the petitioner agreed to pay, he could not pay the amount. He paid only Rs.10 lakhs on 30.06.2006 and he would also contend that inspite of the best efforts, he has neither paid nor sold the property. Therefore, he again made a representation on 14.11.2006 offering to pay a sum of Rs.65 lakhs and settle the balance on or before 31.07.2007, but the same was rejected by the respondent Bank and initiated further proceedings under SARFAESI Act. Thereafter, the Bank issued a notice under Section 13(2) and that was also challenged by the petitioner in O.A.(S) No.9 of 2007 in Securitisation Appeal. But in the mean while, the Bank issued possession notice under Rule 8(1) of the SARFAESI Rules 2002 and thereafter, the Bank also issued a paper publication inviting sale cum tender notification by fixing the same on 13.03.2007 and aggrieved by the same, the petitioner approached the Debts Recovery Tribunal by filing stay application and the DRT has also granted an order directing to remit a sum of Rs.20,00,000/- on or before 13.03.2007 and further sum of Rs.7,00,000/- on or before 27.03.2007 and adjourned the matter to 28.03.2007. The petitioner complied with the first part of the order viz., payment of Rs.20 lakhs on 13.03.2007, but failed to comply with the second part of the order and sought time extension for the same, which was also accepted by the Tribunal and granted two weeks time for second instalment of Rs.7 lakhs. However, the same was also not paid by the petitioner. Thereafter, the petitioner made a representation to the respondent Bank to consider his request and his request for approving the OTS scheme was rejected by the third respondent. The petitioner has come forward with the writ petition seeking for a direction directing the respondents 1 and 2 to revive OTS scheme dated 20.03.2006 literally seeking Bank to accept his terms of compromise.

3. The learned counsel for the respondent Bank brought to the notice of this court a judgment of this Court in the case of Tamil Nadu Industrial Investment Corporation Ltd v. Millenium Business Solutions Pvt. Limited reported in 2004(5)CTC 689, wherein, a Division Bench has categorically stated that recovery of loans are contractual in nature and the writ petition is not proper remedy for borrower. "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*, AIR1962 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 on mere sympathy or compassion. No doubt, there may 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.

4. The learned counsel also brought to the notice of this court a latest judgment of the Supreme Court in the case of *Oriental Bank of Commerce V. Sunder Lal Jain & Another* reported in AIR 2008 Supreme Court 1339, wherein, the Apex Court has held as follows:- " 8. The principles on which a writ of mandamus can be issued have been stated as under in *The Law of Extraordinary Legal Remedies* by F.G.Ferris and F.G.Ferris.Jr: Note 206 -.....The correct rule is that mandamus will not lie where the duty is clearly discretionary and the party upon whom the

duty rests has exercised his discretion reasonably and within his jurisdiction, that is upon facts sufficient to support his action."

9. These very principles have been adopted in our country. In Bihar Eastern Gangetic Fishermen Cooperative Society Ltd V. Sipahi Singh and others, AIR 1977 SC 2149, after referring to the earlier decisions in Lekhraj Satramdas Lalvani V. Deputy Custodian-cum-Managing Officer, AIR 1966 SC 334; Dr.Rai Shivendra Bahadur V. The Governing Body of the Nalanda College, AIR 1962 SC 1210 and Dr.Umakant Saran V. State of Bihar, AIR 1973 SC 964, this Court observed as follows in paragraph 15 of the reports: ".....There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of the officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate Tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. ... In the instant case, it has not been shown by respondent No.1 that there is any statute or rule having the force of law which casts a duty on respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that respondent No.1 was not entitled to apply for grant of a writ of mandamus under Article 226 of the Constitution and High Court was not competent to issue the same." Therefore, in order that a writ of mandamus may be issued, there must be a legal right with the party asking for the writ to compel the performance of some statutory duty cast upon the authorities. The respondents have not been able to show that there is any statute or rule having the force of law which casts a duty on the appellant bank to declare their account as NPA from 31st March, 2000 and apply RBI guidelines to their case."

5. The prayer in the writ petition for a mandamus cannot be granted because the court cannot direct the Bank or compel the Bank to enter into settlement. When

the settlement was offered to the petitioner, he has not complied and has become a defaulter and has failed to utilise the opportunity already granted to him. Hence, as held by the Supreme Court and a Division Bench of this court, no such mandamus can be granted. The writ petition is not maintainable and hence the same is dismissed. No costs. Consequently, connected M.P.Nos.1 to 3 is closed.

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