

R.Raghavan Vs. the Branch Manager

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Court : Chennai

Decided On : Feb-14-2012

Judge : Vinod K.Sharma, J.

Acts : [Constitution of India](#) - Articles 226

Appeal No. : W.P.No.18139 of 2011 And M.P.No.1 of 2011

Appellant : R.Raghavan

Respondent : The Branch Manager

Advocate for Def. : Mr.K.V.Sundar Rajan, Adv.

Advocate for Pet/Ap. : Mr.D.K.Krishnakumar, Adv

Judgement :

PRAYER: Writ petition filed under Article 226 of the [Constitution of India](#), praying for the issue of Writ of Mandamus directing the respondent Corporation to permit the petitioner to pay the balance amount of Rs.2,01,053/- along with 6% simple interest under the OTS Scheme, to settle the loan account No.7199-0605 and pass such orders.

ORDER

1. The petitioner prays for issuance of a Writ in the nature of Mandamus directing the the Branch Manager, Tamil Nadu Industrial Investment Corporation, to accept a sum of Rs.2,01,053/- (Rupees two lakhs one thousand and fifty three only) along with 6% simple interest towards full and final settlement of outstanding amount under the OTS Scheme. The memo of parties shows that the petitioner has not impleaded The Tamil Nadu Industrial Investment Corporation (hereinafter called the Corporation) as party, though a necessary party.

2 The petitioner availed loan of Rs.3,00,000/- (Rupees three lakhs only), which was secured by mortgage of immovable properties and hypothecation of movable assets. The loan was also guaranteed by the guarantor.

3 The Corporation under the instructions of Reserve Bank of India, offered one time settlement Scheme with respect to the NPT sick industry. As already noticed, for the reason best known to the petitioner, he has not chosen to implead the Tamil Nadu Industrial Investment Corporation as party to the writ petition, and only impleaded its branch Manager.

4 The unit of the petitioner being a sick industry, approached the Corporation for one time settlement, under the OTS Scheme and deposited a sum of Rs.1,00,000/- (Rupees one lakh only) as per the stipulation of the , on 06.05.2007.

5 The submission of the petitioner is that no information, either accepting or rejecting the offer of the petitioner was given to him.

6 The learned counsel for the petitioner, contends that once the petitioner had accepted the offer of Corporation under the OTS Scheme, and had deposited a sum of Rs.1,00,000/- (Rupees one lakh only) as initial amount, it was not open to the respondent Corporation to go back on their promise, on the principle of promissory estoppel. Otherwise also, one time settlement created a right in favour of the petitioner, which could not be taken away by the Corporation.

7 In support of this contention, learned counsel for the petitioner placed reliance on the judgment of the Honourable Supreme Court in Sardar Associates and Others vs. Punjab & Sind Bank and Others (2009(8) SCC 257) wherein the

Honourable Supreme Court has laid down as under: 42. If in terms of the guidelines issued by Reserve Bank of India a right is created in a borrower, we see no reason as to why a writ of mandamus could not be issued. We would assume, as has been contended by Mr.Singh, that while exercising its power under Article 226 of the [Constitution of India](#), the High Courts may or may not issue such a direction, but the same, in our opinion, by itself, would not mean that the High Court would be correct in interfering with an order passed by the Appellate Tribunal which was entitled to consider the effect of such one-time settlement.

8 The writ petition is opposed by the respondent, on the ground that the petitioner has not come to the Court with clean hands and has failed to disclose the correct facts.

9 The stand of the respondent is, that the petitioner did not settle the loan amount under the OTS Scheme by stipulated date i.e. on or before 31.03.2004. The submission of the respondent is that under the OTS Scheme, after initial payment, balance was to be cleared on or before 31.01.2004.

10 On failure of the petitioner to clear outstanding loan under the OTS Scheme, the respondent exercised their statutory power under Sec.29 of the State Finance Corporation Act, by taking possession of the mortgaged property. In spite of the proceedings under Sec.29 of the State Finance Corporation Act, the petitioner did not take any step to settle the amount. 11 Thereafter, number of letters issued to the petitioner directing him to avail benefits under the OTS Scheme. That it was the petitioner who failed to accept the offer.

12 The primary and collateral security mortgaged with the Corporation, was brought for sale by inviting tender in the sealed cover, but there was no bidder for the purchase of property.

13 On the assurance of the petitioner that he would immediately deposit a sum of Rs.2,00,000/- (Rupees two lakhs only) as part payment against outstanding payment, and will also deposit balance 16% of the principal amount as per OTS, the period to avail one time settlement was extended, but the petitioner failed to

stand by his assurance.

14 The contention of the learned counsel for the respondent therefore was that writ petition is totally misconceived, therefore deserves to be dismissed.

15 Learned counsel for the respondent, contended that this writ petition is otherwise not competent in view of the law laid down by the Honourable Division Bench of this Court, in Tamil Nadu Industrial Investment Corporation Limited vs. Millenium Business Solutions P. Ltd. and another (2004(5)CTC 689) wherein the Honourable Division Bench has laid down as under: 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. Vs. State of West Bengal, AIR 1962 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.

9. In Bihar Eastern Gangetic Fishermen Co-operative Society Ltd., Vs. Sipahi Singh, AIR 1977 SC 2149 (vide para -15) the Supreme Court observed:

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 that 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. (See Lekhraj Satramdas Lalvani Vs. Deputy Custodian-cum-Managing Officer, (AIR

1966 SC 334 = 1966 (1) SCR 120), Dr.Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College (AIR 1962 SC 1210), and Dr.Umakant Saran Vs. State of Bihar (AIR 1973 SC 964). 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 the High Court was not competent to issue the same.

10. In M/s. M.M.Accessories, Jogi Ram Puri Road, Naziabad and Another Vs. M/s.U.P. Financial Corporation, Kanpur and Another (2002 (46) Allahabad Law Reporter 261), a Division Bench of the Allahabad High Court, following the judgment in Bihar Eastern Gangetic Fishermen Cooperative Society Ltd (supra) observed: Therefore, there must be legal right with the party asking for the writ to compel the performance of some statutory duty cast upon the authorities. The petitioners have not been able to show that there is any statute or rule having the force of law which casts a duty on the UPFC to accept the proposal of one time settlement made by a borrower whereunder he has given his own terms. It is important to note that at the time when the loan was disbursed to the petitioners, a contract was entered into by them which provided for the rate of interest and mode and manner of payment. The amount of instalment and the date by which it had to be paid was also mentioned therein. The UPFC is not acting contrary to the terms of the contract which has been entered into between the parties. What the petitioners want now is that their proposal for one time settlement which contains terms advantageous to them, specially a rate of interest lesser than what they had agreed upon at the time of entering into the contract and disbursement of the loan, be accepted. The State Financial Corporations Act, which governs the working of the UPFC, does not contain any provision for entering into a one time settlement. A Court cannot issue any direction to a party to enter into a compromise or settlement. By the very nature of things a settlement involves consent and it is a voluntary act of the party. In a matter where a creditor is enforcing its liability upon the debtor, the debtor has no legal right to claim that the claim be settled on

favourable terms proposed by him whereby the claim of the creditor is reduced. Therefore, in our opinion, the prayer made by the petitioners that this Court should issue a writ of mandamus to the respondents to accept the proposal of one time settlement made by them cannot be granted as it does not come within the principles on which a writ of mandamus can be issued under Article 226 of the Constitution. Which particular course of action should be taken by the Corporation, would depend upon a variety of factors. It is likely that the revival of an industrial concern may be in larger public interest. By way of example, if the industrial concern is employing a large work force, its closure may throw a large number of persons out of employment. The industrial concern may be situated in a backward area which the Government wants to develop and its closure may have a serious adverse impact as it may deter other entrepreneurs in setting up industry in that area. It may be carrying on a business which is of public utility and its closure may adversely affect a large cross section of people. In these types of cases, the Corporation, having regard to the public interest involved, may enter into a settlement so that the industrial concern may not be closed and the production activity may go on. There may be cases where the nature of the activity of the industrial concern may not be of such a character and its closure may not have any adverse impact of any significance. The need to enter into a settlement may also depend upon the facts as to how best the money of the Corporation can be retrieved. If the industrial concern has valuable land or building or machinery, its sale may give a sizeable amount. However, if the condition of the industrial unit is such where sale of its unit or hypothecated property may not give sufficient money, it may be prudent to enter into a settlement. The human element also cannot be ignored altogether. The unit may be substantially damaged on account of some natural calamity like earthquake, flood or fire or calamity falling upon the main person running the industrial concern like death or serious ailment. In such a situation the Corporation, taking a humanitarian view, may enter into a settlement. These are matters to be examined and determined by the experts of the Corporation as to what will be the ideal course to be adopted in a given case. The Courts have neither the expertise nor the knowledge to go into all these questions and then to examine why in one case the offer of one time settlement was accepted and why in another case it was refused. The exact idea of the nature and

position of the industrial concerns can never be had by the affidavits filed by the parties. This will require an inspection of the spot, the assessment of the valuation of the land, building and machinery and a host of other factors. It is well-nigh impossible for the Courts to enter into such kind of exercise in proceedings under Article 226 of the Constitution. It is also noteworthy that if a prayer is entertained on the part of a defaulting unit to compel or direct the Corporation to enter into one time settlement on the terms proposed by it, then a profit making industrial concern which is capable of paying its dues as per the terms of the agreement entered into by it, would also like to get a one time settlement in his favour. Who would not like to get his liability reduced and pay less than what he is liable to pay under the contract executed by him.

11. In the present case no error of law or violation of law has been pointed out by the writ petitioner. As observed by a Division Bench of this Court in Rama Muthuramalingam Vs. Deputy Superintendent of Police, Tiruvarur District & Others (2004 (5) CTC 554) the Court should exercise judicial restraint and not interfere with the matters which do not pertain to its proper domain. 16 In view of the law laid down by this Court, and also in view of the fact that it is the petitioner who had failed to take benefits under the OTS Scheme, by not depositing the amount within the stipulated time, and thereafter again failed to keep his promise to avail extended time. I find no force in the contentions raised by the learned counsel for the petitioner. 17 The judgment of the Honourable Supreme Court, on which reliance is placed by the learned counsel for the petitioner, has no application, as it is not a case where the petitioner is seeking to enforce his right under the OTS policy in pursuance to the deposit of Rs.1,00,000/- (Rupees one lakh only), but he is seeking direction of this Court, to the respondent to accept offered amount with 6% interest. 18 The fact of this case show, that the Corporation had accepted the offer under the OTS. But it is the petitioner who failed to accept the offer, and comply with the stipulations of OTS Scheme by depositing the balance amount within the stipulated period. The Corporation was more fair, as in the absence of any provision for extension of time, it was further extended on assurance of the petitioner to pay a sum of Rs.2,00,000/- (Rupees two lakhs only). It was the petitioner who failed to avail this opportunity. 19 The relief cannot be granted on the proved facts, that the petitioner had failed to avail

benefit of OTS policy.

20 Even otherwise, in view of the judgment of the Hon'ble Division Bench of this Court, this Court cannot issue direction to the respondent to settle the loan under OTS Scheme.

No merit, dismissed.

Connected miscellaneous petition is also dismissed.

No cost.

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