

(2023) 11 KL CK 0062
In the High Court Of Kerala
Case No : Writ Petition (C) No. 11939 Of 2023

Binoy Paulose

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 03-11-2023

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security
Interest Act, 2002 — Section 13(2)

Citation : (2023) 11 KL CK 0062

Hon'ble Judges : K. Babu, J

Bench : Single Bench

Advocate : Sajeev Kumar K.Gopal, Manu S, Jayan, Sunil Shanker, Vidya
Gangadharan

Final Decision : Dismissed

Judgement

K.Babu, J.

1. The prayers in this Writ Petition filed under Article 226 of the Constitution of India are as follows:

“(i) Issue a writ of Certiorari or any other appropriate writ or direction orders calling for records leading to Exhibit P-14 and quash the same;

(ii) Issue a writ of Mandamus or other appropriate writs, orders or directions directing the respondents 6 to 8 to grant the benefits of restructuring of the loan accounts of the petitioner as requested in Exhibit P-13 by granting the benefits of the circulars of the RBI dated 06-08-2020 and 05-05-2021 thereby to regularize the loan account.

(iii) Declare that the petitioner is entitled to get the benefit of the resolution framework of the RBI dated 06-08-2020 and 05-05-2021 and Exhibit P-14 order issued declining the benefits of the RBI Circular is illegal.

(iv) Issue a writ of Mandamus or other appropriate writs, orders or directions directing the respondents 6 to 8 to keep in abeyance all the recovery measures initiated against the petitioner under the SARFAESI Act pursuant to Exhibit P-6 possession notice;

(v) Render such other orders or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. Heard Sri.Sajeev Kumar K.Gopal, the learned counsel appearing for the petitioner and Sri.Sunil Shankar, the learned Standing Counsel appearing for the respondent Bank.

3. The petitioner is the proprietor of Darshana Cinema Complex, Piravom in Ernakulam district. The petitioner availed a loan from the South Indian Bank (respondent No.6) in 2015 for the purpose of renovation of the theatre complex. The petitioner had deposited the title deeds in respect of 99.78 cents of land and the building thereon, the theatre complex and also another 39 cents of land in survey No.595/9/2 of Piravom Village with intent to create an equitable mortgage.

4. The petitioner committed default in repaying the amount due to the bank. On 29.12.2020, the bank classified the loan account as Non Performing Asset (NPA). The bank initiated proceedings under the SARFEASI Act by issuing notice under Section 13(2) of the SARFEASI Act. Thereafter, the bank obtained symbolic possession of the theatre complex as well as the other immovable property. While so, the petitioner filed W.P(C) No.25727/2021 before this Court. In W.P(C) No.25727/2021 on 30.11.2022 this Court passed the following judgment:

"5. Having heard the learned counsel appearing for the petitioner and the learned counsel appearing for the 6th respondent bank, I am of the opinion that the contentions advanced by the learned counsel for the respondent bank need not be examined at this point of time and the petitioner can be permitted to approach the bank for restructuring or for One Time Settlement. Accordingly, this writ petition will stand disposed of, directing that the if the petitioner approaches the bank with a suitable proposal for restructuring or for One Time Settlement, the competent authority of the 6th respondent bank shall take a decision on such proposal, without undue delay and communicate its decision to the petitioner, provided the proposal is made within a period of two weeks from today. The question as to whether the petitioner is entitled to the benefit of any of the Circulars issued by the Reserve Bank of India shall also be considered by the 6th respondent bank. Till such time as a decision is taken on the proposal to be submitted by the petitioner, further proceedings under the provisions of the SARFAESI Act shall remain suspended. I make it clear that this benefit will be available to the petitioner only if he submits a proposal as above, within the period specified."

5. The petitioner submitted Ext.P13 proposal for restructuring of the loan account pursuant to the judgment of this Court. The bank rejected the proposal of the

petitioner for restructuring of the loan. The learned counsel for the petitioner submitted that the reason cited by the bank for rejecting Ext.P13 is not sound. The learned counsel further submitted that the reasons noted in Ext.P14 decision of the bank are contrary to the guidelines issued by the Reserve Bank of India.

6. The learned counsel for the respondent bank submitted that the proposal for restructuring of the loan was declined as it was not commercially viable and the financial covenants were not in accordance with MSME Rehabilitation and Restructuring policy of the bank. It is further submitted that there are several financial impediments that prevented the petitioner's account from being considered for restructuring. It is submitted that there were no documents or evidence to support the existence of sustainable cash flows available from the borrower's agricultural activities. The borrower's KCC account had shown NIL credit turnover since 2018 and therefore the bank was compelled to decline the request for restructuring.

7. The learned counsel for the bank further submitted that the firm managed by the petitioner was in Net loss of Rs.1.17 crores. The petitioner failed to meet most of the parameters for restructuring of the loan.

8. The learned counsel further contended that the Reserve Bank of India or Union of India can only provide for broad guidelines and any borrowing arrangement is a commercial contract between the lender and the borrower and therefore, the viability of the loan can only be assessed by the lender. It is also submitted that at the time of the request for restructuring of the loan the window for the same was not open as the Resolution Framework for Covid-19 remained open only till 31st December 2020.

9. The learned counsel for the petitioner submitted that the bank has not considered the commercial viability of the unit managed by the petitioner. By way of Ext.P13, the petitioner submitted a proposal along with a revised repayment schedule, wherein the petitioner submitted thus:

"Once the KCC flood relief loans of Binoy Paulose of Rs.72.33 lakh and Rs.52.09 lakh has been closed the half yearly remittance of Rs.32 lakh every half year will be first remitted to KCC loan of Rs.65 lakh of Saira Binoy for closure of that account. Once the loan is closed the half yearly remittance of Rs.32 lakh every half year and the yearly remittance of Rs.51 lakh every year can be utilized for reducing the limit and gradual closure of KCC loan of Rs.399 lakh of Binoy Paulose.

It may be noted that with this flexible repayment schedule we will be able to meet the repayment obligations to the Bank from the cashflow from our operations and sale of property and agricultural income. We are sure that we will be able to service our loans as per the reworked schedule mentioned above.

Taking into consideration all these factors, we request you to kindly keep in abeyance the recovery proceedings and allow us to service these loans as per the

mentioned schedule. Requesting your support for reviving our institution and repaying the bank.”

10. After considering the proposal, the bank rejected the same and informed the petitioner that the competent authority has considered the question whether restructuring was possible or not as per RBI Circulars and intimated the bank as follows:

“As per the guidelines issued by RBI on 06-08-2020 and 05-05-2021 on the subject of restructuring of accounts due to COVID-19 related stress. Agriculture loans were not eligible for restructuring under these frameworks. On the contrary, only business loans were eligible based on certain conditions, the major one being the commercial viability of the unit by a detailed analysis of the financials and the projections including the future cash flows from the unit. Further all the COVID related reliefs announced by RBI has expired and there no such reliefs available now”.

11. The learned counsel for the bank submitted that the RBI in Ext.P15 guidelines had specifically mentioned that the lending institutions are at liberty to assess the liability of a proposal based on the approved policy.

12. The learned Standing Counsel for the bank brought to my notice the relevant portion of the RBI Circular in this regard, which reads thus:

“4. The lending institutions shall ensure that the resolution under this facility is extended only to borrowers having stress on account of Covid19. Further, the lending institutions will be required to assess the viability of the resolution plan, subject to the prudential boundaries laid out in this Annex. Towards this end, each lending institution shall put in place a Board approved policy detailing the manner in which such evaluation may be done and the objective criteria that may be applied while considering the resolution plan in each case.

XXX XXX

8. Resolution under this framework may be invoked not later than December 31, 2020 and must be implemented within 90 days from the date of invocation. However, the lending institutions should strive for early invocation.

XXX XXX

16. Resolution under this framework may be invoked not later than December 31, 2020 and must be implemented within 180 days from the date of invocation.”

13. In the counter affidavit, it is submitted that the decision to decline the request for restructuring was based on the following reasoning:

“The borrower has submitted that the existing unit has been leased out to Mr.Chacko Paulose, S/o of the proprietor for a monthly rent of Rs.50000/-. Since monthly cash flow of 50000/-is not sufficient for meeting the obligation of the borrower projections of the existing theatre (Ittajakes) is taken into

consideration for assessing the viability as per the request of the borrower.”

14. It is submitted that after analysing the inputs submitted by the petitioner the bank concluded that the borrower would not be able to generate positive cash flow, which would enable them to repay the obligation till the financial year 2030, which makes the proposal commercially not viable. It is also relevant to refer paragraph 80 of the judgment of the Supreme Court in Small Scale Industrial Manufactures Association v. Union of India [(2021) 8 SCC 511]:

“80. Now so far as the submission on behalf of the petitioners that as per the notifications/circulars/reliefs offered by RBI and/or Finance Department of the Union of India ultimately it is left to the bankers and it should not have been left to the bankers and the Government/RBI must intervene and provide further reliefs is concerned, at the outset, it is required to be noted that as such the bankers are commercial entities and since the customer profile, organisational structure and spread of each lending institution is widely different from others, each lending institution is best placed to assess the requirements of its customers and therefore, the discretion was left to the lending institutions concerned. Any borrowing arrangement is a commercial contract between the lender and the borrower. RBI and/or the Union of India can provide for broad guidelines while recommending to give the reliefs.”

15. It is trite that lending has always been the discretion of lending institutions on broad parameters. This Court, in the exercise of its jurisdiction under Article 226 of the Constitution of India, cannot replace the wisdom of the lender/banker in the process of lending unless there are compelling reasons, in a sense that there are all-around violations of the rules and regulations or any of the statutory provisions in this regard.

16. In the present case, the bank has carefully analysed the proposal for restructuring based on the inputs submitted by the petitioner himself and came to the conclusion that the proposal was not viable. It is evident from the materials placed before the Court that the bank has considered the entire relevant aspects while rejecting Ext.P13 proposal.

Therefore, the Writ Petition lacks merits and it stands dismissed. Pending Interlocutory Applications, if any, stand closed.