

(1985) 07 MAD CK 0003
In the Madras High Court

Kamala Industrial Unit

APPELLANT

Vs

State Bank of India and Another

RESPONDENT

Date of Decision : 23-07-1985

Acts Referred:

Citation : (1997) 1 MLJ 664

Hon'ble Judges : V. Ratnam, J;V. Rathnam, J

Bench : Division Bench

Judgement

V. Rathnam, J.—In this writ petition, the petitioner, a proprietary industrial unit, has prayed for the issue of a writ of mandamus directing the first respondent herein to come forward with a scheme for nursing the petitioner industrial unit. The proprietor of the petitioner is a qualified engineer. In 1970 the 1st respondent announced a scheme known as ""entrepreneur Scheme"" to aid and assist by way of financial assistance and expert guidance for setting up of small scale ""industries by enterprising and technically qualified and skilled persons. Under that scheme, if a qualified entrepreneur of experience craftsman having personal attributes like character, integrity and possessing the requisite knowledge in a particular line and managerial ability, desired to set up worth while projects with prospects of successful operation and reasonable assurance of repayment, the State Bank (hereinafter referred to as the ""Bank"") expressed willingness to offer financial support. The assistance so extended covered the entire range of financial requirements for working capital, acquisition of fixed assets, etc. In deserving cases, depending upon the merit of the project, making available of higher finances will also be considered. The assets created from the Bank finance should be charged to the

Bank. Advances towards working capital were recoverable every year. The other advances were repayable within a period of 5/10 years in

suitable instalments depending the profitability of the project. A start up period of 18 months to 24 months or more was also allowed. The case of

the petitioner is that in response to this scheme, in March, 1970, it applied for financial assistance for setting up a small scale industry in Tiruchi for

manufacturing machine parts to accord with the specifications given by large scale industries such as BHEL, TAFE, etc., By letter No. D1/SSI,

dated 27.8.1971, the Bank extended to the petitioner the following facilities:

- (i) pre-operative expenses for Rs. 8,000 called as term loan II,
- (ii) machinery purchase loan for Rs. 1,42,000 called as term loan No. 1 and
- (iii) over-draft limit of Rs. 24,000 against bills.

After the loan was sanctioned as aforesaid and the petitioner purchased the required machinery, the petitioner entered into a medium term loan I

agreement with the Bank under which the entire plant and machinery, etc., were given as security towards the loan. The petitioner claims to have

discharged the term loan II by repayment of a sum of Rs. 8,000. Regarding the term loan No. 1, the petitioner claims to have repaid Rs. 28,000

which, even according to the petitioner, had been adjusted by the Bank towards the interest accrued. In August, 1972, the machinery purchased

by the petitioner appears to have developed functional defects. The petitioner claims that the Bank should have taken steps in the matter of

replacement of the defective machinery and that the Bank adopted a negative attitude in this matter. In 1973, the petitioner industrial unit became

sick. A change of management was attempted to revive the unit, but even that did not bring about the desired result and the industrial unit continued

to remain sick under the management of the proprietor. Sometime in September, 1976, an inspection of this unit was made by Rohira Committee

which, it is stated, carried out an exhaustive study of the sick unit and recommended immediate financial assistance to the tune of Rs. 30,000 by

way of an additional term loan. The petitioner stated that the Bank declined to extend financial help despite numerous requests made and the

availability of work orders. The petitioner claims that in terms of paragraph 9 of the codified circulars as on 31.12.1978 Small Industries and Small

Business Finance Vol. 1, when once an industrial unit is identified as a sick unit,

the financing bank is bound to adopt a sympathetic and systematic approach for nursing such a unit with a view to restore its capacity to generate internal surplus. The petitioner also sought support for such a nursing programme from paragraphs 11 and 12 of the circular referred to above. According to the petitioner, only when a nursing programme did not yield the desired results and rehabilitation efforts are rendered futile, Bank can take steps to recall the advance. In view of the unsympathetic attitude of the Bank, according to the petitioner, loans to the tune of Rs. 30,000 had to be raised from private parties for augmenting the working capital and with that the petitioner industry has been some how kept running. At the request of the petitioner, the 2nd respondent addressed communications to the officers of the Reserve Bank of India and also to the Bank; but these communications did not evoke any response. However, on 21.4.1981, the Bank had sent a notice to the petitioner recalling the loan of Rs. 3,09,568.40 under S.I.B. No. 190 and Rs. 35,294.69 under S.I.B. No. 191 and demanded repayment of these amounts with interest at 12.40% and 11.85% per annum respectively. Referring to another sick unit known as ""NAAN Foundary"" and the extension of financial assistance by the Bank, the petitioner claimed that it had been subjected to discriminatory treatment by the Bank. Aggrieved by the recall notice issued by the Bank on 21.4.1981, the petitioner instituted O.S. No. 345 of 1981, Sub-Court, Tiruchi, praying for a declaration that the notice dated 21.4.1981 issued by the Bank recalling the loan is illegal and unenforceable and for a permanent injunction restraining the Bank from giving effect to the notice and for a mandatory injunction directing the Bank to render all possible assistance to the petitioner to keep the unit running under the nursing programme. On an application filed by the petitioner in I.A. No. 206 of 1981 in O.S. No. 345 of 1981, the petitioner prayed for an order directing the Bank to render all help and assistance to the petitioner to keep the unit running and to grant an ex pane order to that effect under the nursing programme. Though tire learned Subordinate Judge, Tiruchi, granted an interim injunction as prayed for by the petitioner, on revision in C.R.P. No. 2244 of 1981, this Court set aside that order holding that there was no obligation on the Bank to lend the petitioner as much money as required to keep the industry in a running condition and

nursing it to be run and that the Bank was in order in refusing to lend further sums and further it was the duty of the Bank to recover the loans

already granted if the financial condition of the petitioner had deteriorated and that the relief prayed for by the petitioner was a highly, fantastic one.

A SLP (Civil No. 10385 of 1981), before the Supreme Court was also dismissed. It is thereafter that the petitioner has come forward with, this

writ petition praying for the relief set out earlier.

2. In the affidavit filed in support of this writ petition, the petitioner has stated that the Bank had held out a promise and assurance to extend

financial assistance and support to the petitioner industry and that it cannot be permitted to go back on its promise and act to the detriment of the

petitioner. In short, the petitioner has invoked the principle of promissory estoppel. Besides, the petitioner has also charged the Bank with having

acted arbitrarily in picking and choosing industrial units similarly situated (or bestowing favours on some and not extending assistance to others.

While assuring the Bank about the earnestness to repay every pie due to it, the petitioner claimed that it was only seeking an implementation of a

nursing scheme which will rejuvenate the sick unit and promote the growth. The notice issued by the Bank recalling the advances was also stated to

be arbitrary in that the Bank had not given the petitioner any reasonable opportunity. On the aforesaid grounds, the petitioner has approached this

Court for the issue of a writ of mandamus to come forward with a scheme for nursing the petitioner.

3. In the counter affidavit filed by the Bank, it stated that in 1971, it sanctioned credit facilities to the petitioner on an application made after

undertaking feasibility studies. Three such facilities were given to the petitioner (a) medium term loan of Rs. 1,42,000 (b) demand cash credit

facilities of Rs. 8,000 and (c) Rs. 24,000 on bills purchase account and 100% loan had been given to the petitioner and the petitioner did not

contribute any capital for setting up plant and machinery. Under the terms Of the contract, the medium term loan was repayable from the cash

generated by the unit in 28 quarterly instalments of Rs. 5,000 each and the last instalment of Rs. 2,000 was payable as the 29th instalment. The

contract further provided that in the event of default in payment of any one of the instalments or interest, the-entire loan could be recalled and the

period for liquidating the debt was fixed at 8 years and 9 months. According to the Bank, the petitioner did not adhere to the repayment schedule

agreed and since the inception, only a sum of Rs. 30,000 had been paid, though the unit became sick only in 1973, leaving the balance of Rs.

3,40,000 due. Adverting to the amounts advanced to the petitioner as cash credit facilities, the Bank stated that a sum of Rs. 40,000 was due. The

Bank also stated that there was no delay on its part in the disbursement of the loans and that it had lent all financial support and given full assistance

to the petitioner as promised. Even a change of management, though not agreed to by the Bank, was unproductive of results in the matter of

regeneration of funds for repayment to the Bank. The Bank also stated that though the petitioner availed itself of finance on bills submitted to the

Bank for discount, yet, it entered into concurrent transactions with other banks and did not make any payment to the Bank and this amounted to

deception by the petitioner. Though amounts had been realised by the petitioner, it would not deposit those amounts with the Bank and the

realisations were not routed through the Bank but siphoned off by the petitioner for its purposes. After referring to the proceedings culminating in

C.R.P. No. 2244 of 1981, the Bank stated that the writ petition has been filed on the very same grounds on which the injunction had been asked

by the petitioner earlier in O.S. No. 348 of 1981, Sub-Court, Tiruchi, which was rejected by this Court and the Supreme Court and therefore, the

petitioner is not entitled to any relief. The defect in the machinery purchased was not admitted by the Bank and that according to the Bank, would

establish that the petitioner did not know its requirements and what to purchase. According to the Bank, the recommendations of the Rohira

Committee were only recommendatory in nature for the purpose of internal assessment and does not clothe the petitioner with any rights as to how

a Bank should deal with a sick unit and it was found that the petitioner unit is incapable of revival. The Bank reiterated that the petitioner unit is a

sick unit beyond redemption and there was no possibility of its making or generating profit or surplus and the petitioner has been siphoning all funds

for un provocative and personal uses. Referring to the recommendations made by the second respondent, the Bank took up the stand that those

recommendations were not binding on the Bank as it was business of the Bank to act as a banker and help customers and while doing so, the

Bank is the sole judge and the discretion of the Bank and its decisions - managerial and commercial - cannot be made justiciable issues. The Bank

also stated that the petitioner had no right whatever to compel the Bank to lend to institutions which the Bank considered as incapable of survival.

The Writ Petition was also characterised as a total abuse of the process of court.

4. In the reply affidavit filed by the petitioner, the petitioner has reiterated the terms of the Entrepreneur Scheme and proceeded to complain about

the alleged breach of an interim order obtained by the petitioner in W.M.P. No. 1474 of 1982 restraining the Bank from taking steps for scaling,

closing or otherwise making the petitioner unit non-functional. The Bank had not proceeded to assist the petitioner, but had adopted an unfriendly

attitude by hurriedly instituting O.S. No. 127 of 1982, Sub-Court, Tiruchi, for the recovery of the loan amounts from the petitioner. This act of the

Bank has also been characterised as amounting to contempt and the reply affidavit winds up saying that there are no merits in the counter.

5. The principal and the only contention of the learned Counsel for the petitioner is that by the formulation and publication of the Entrepreneur

Scheme by the Bank, the petitioner has been induced to avail itself of the credit facilities for starting the industry and that the Bank had also

advanced loans to the petitioner and while so, when the unit has become sick, instead of nursing the unit and rehabilitating it to put on a functional

basis, the Bank had proceeded to recall the loans, when the petitioner unit had orders from other large industries and this, under the terms of the

Entrepreneurs Scheme"" issued by the Bank, would suffice it to attract the principles of promissory estoppel compelling the Bank to render further

financial assistance and support to the petitioner unit to enable it to become fully functional again. Strong reliance in this connection was placed by

the learned Counsel for the petitioner upon the decision in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, : Gujarat

State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., and Tapti Oil Industries and Another etc. Vs. State of Maharashtra and Others, . On the

other hand, the learned Counsel for the Bank after referring to the institution Of several suits by the petitioner, particularly O.S. No. 345 of 1981,

Sub-Court, Tiruchirapalli, submitted that even in the course of the order of this Court in C.R.P. No. 2244 of 1981, it has been held that there is no

obligation cast on the Bank to lend the petitioner moneys as may be required to keep the industry running or even nurse it despite the commission

of acts of mismanagement, misfeasance or malfeasance and this order had also been affirmed by the Supreme Court and therefore, the petitioner

cannot be permitted to take refuge under these proceedings under Article 226 of the Constitution of India for the same relief refused earlier. In this

connection, the learned Counsel invited attention to the decision of this Court in *State Bank of India, Tiruchirapalli Vs. J.S. Ramamoorthy*, .

Alternatively, the learned Counsel submitted that in this case, the Bank had fully and completely fulfilled its promise in making available to the

petitioner the entire loan under the Entrepreneur Scheme and therefore, there was nothing further that can be done in the matter of extending further

financial support under the guise of nursing scheme. The learned Counsel further submitted that even if the Bank had entered into a contract to lend

moneys to the petitioner, that could not be specifically enforced and in this case when there is neither a promise nor a contract and when the Bank

has fulfilled completely its obligation under the contract already entered into, there was no further obligation on the part of the Bank cannot be

compelled to further lend to the petitioner or extend assistance, for, that would amount to forcing the Bank to part with moneys to the petitioner,

when there is neither a contract nor even a promise. In support of the petition that there cannot be any specific performance of a contract to lend,

the learned Counsel for the Bank relied upon the decisions reported in *The South African Territories Co. Ltd. v. Wallington*, 1898 A.C. 309: *Phul*

Chand v. Chandmal ILR 30 All. 252: *The Hitwardhak Cotton Mills Co. Ltd. v. Soradji Dineshaw Karaka* ILR 33 Bom.42: *Sheikh Gulam v.*

Sadarjan Bibi ILR Cal. 59 and *Meenakshisundara Mudaliar alias Thiagaraja Mudaliar v. Rathnasami Pillai* ILR 41 Mad. 959. The learned Counsel

further pointed out that on the facts and the circumstances of this case, the principle of promissory estoppel cannot be invoked and that the

decisions relied on by the learned Counsel for the petitioner are inapplicable. No attempt was made by the Bank to close down the petitioner unit,

according to the learned Counsel for the Bank.

6. Earlier, it has been seen that the only basis upon which the petitioner claims that it is entitled to the benefit of the principle of promissory estoppel

is the entrepreneur Scheme formulated by the Bank. The terms and conditions upon which an industry under that scheme can be set up are seen

from the scheme issued by the Bank. The following are the terms and conditions:

If a qualified entrepreneur or an experienced craftsmen having personal attributes like character, integrity and possessing the requisite knowledge in

a particular line and managerial ability, desires to set up worth while projects in industrial estates or Agro Service Centers with prospects for

successful operation and reasonable assurance of repayment, the Bank is willing to offer financial support, without insisting on margin requirements,

if the entrepreneurs lacks background to raise his contribution.

The assistance to entrepreneur covers the entire range of financial requirements, including to the extent necessary, the owner's equity in the

business and pre-operative expenditure. The financial assistance, for working capital as also for acquisition of fixed assets will be limited to 2 lakhs

for an individual entrepreneur are associated in a project. Higher finances will be considered in deserving cases depending upon the merits of the

project.

Security: The assets created from the Bank finance should be charged to the Bank. Normally collateral security of non-industrial assets of third

party guarantee is not insisted upon.

Repayment: Working Capital advances are renewable every year. Term loans, however, are repayable within a period of 5/10 years in suitable

instalments depending upon the profitability of the scheme/project. A reasonable start up period (moratorium) of one and half to 2 years of or more

is also allowed. Interest applied on term loans, during start up period could be recovered after the moratorium is over.

7. There is no dispute that in response to the aforesaid scheme, the petitioner made an application for financial assistance to start an industry. Even

according to the affidavit filed in support of the writ petition, it-is seen that the Bank agreed to extend the following facilities by its letter dt.

27.8.1971 to the petitioners;

(i) Pre-operative expenses for Rs. 8,000 called as term loan II.

(2) Machinery purchase loan for Rs. 1,42,000 called as term loan No. I.

(3) Overdraft limit of Rs. 24,000 against bills.

In the counter affidavit, in paragraph 2, the Bank had clearly taken up the stand that it had given 100% loan to the petitioner and had also extended to the petitioner the loan facilities promised by it. Though the petitioner appears to have repaid the term loan II of Rs. 8,000, from the counter affidavit it is seen that the machinery purchase loan styled as term loan 1, and the overdraft facilities to the tune of Rs. 24,000 had been fully extended. Even from the affidavit filed in support of the writ petition (paragraph 7), it is seen that the petitioner had purchased the machinery with the loan provided in this regard by the Bank. The counter affidavit discloses that though the period of liquidation of this loan was fixed at 8 years and 9 months, the repayment schedule was not adhered to by the petitioner and a sum of Rs. 3,40,000 is now due. The counter affidavit also states that a sum of Rs. 30,000 had been paid by the petitioner, though default had been committed in the earlier payments. Similarly, with reference to the overdraft limit of Rs. 24,000, it is seen from paragraph 3 of the counter affidavit that the facility was extended to the petitioner and a sum of Rs. 40,000 is due to the Bank on that account. It is further seen that though the petitioner had availed itself the advances on bills, it had entered into other transactions with other banks resulting in the non-payment of the amounts due to the Bank. This according to the Bank, is deception practised by the petitioner. It is also seen from paragraph 5 of the counter affidavit that all the moneys were realised for the bills and they were not routed through the Bank but were siphoned off by the petitioner for other purposes. In this state of affairs, the question that arises for consideration is whether the Bank is further bound, under the terms of the scheme, to make available financial assistance to the petitioner under the scheme of nursing as contended by the petitioner on the principle of promissory estoppel. On the facts of this case, I fail to see how the principle of promissory estoppel would apply. As stated earlier, the definite stand of the Bank in paragraph 2 of its counter is that the petitioner "had been given 100% of the loan and there was no contribution whatever by the petitioner for setting up the unit. In the reply affidavit filed by the petitioner, the statement made by the Bank that the petitioner had been given 100% loan has not been disputed at all. In other words, the petitioner has accepted that the Bank had extended all financial assistance to the petitioner as agreed to by it in its letter No. D1/SSI dated 27.8.1971 and has

also made available that amount. This¹ is, therefore, not a case of the Bank trying to back out of its obligation arising from a promise made by it to the petitioner. On the other hand, the Bank had fulfilled the promise held out by it to the petitioner and had also made available financial assistance promised by the Bank to the petitioner. There is, therefore, no question of the Bank arbitrarily withholding further advances after holding out a promise that financial assistance to a particular limit will be made available, but not actually made available. On the other hand, on the facts of this case, it is clearly seen that the petitioner really desirous of availing itself of further or fresh loans or financial assistance, besides what had already been sanctioned and made available by the Bank. The petitioner cannot, therefore be heard to contend that on the facts and circumstances of this case, the principle of promissory estoppel could be invoked. Therefore, the decisions relied upon by the learned Counsel for the petitioner do not in any manner assist the petitioner. Admittedly, even according to the petitioner, it is a sick unit. After having advanced moneys as agreed to, it is entirely a matter for the Bank to consider whether as a sick unit, it further requires to be nursed. That has to be done in accordance with Circular No. D.R.O.D. No. Cas. B.C. 174/C.B.C. 174/C. 446 (S.T.U) Q-78, dated 14.12.1978 issued by the Reserve Bank of India. There is nothing either in the scheme referred to above or in the circular dated 17.4.1979 issued by the head office of the Bank compelling or casting a duty on the Bank even where full advances have been made as in this case, to further assist by making fresh advances to nurse the sick units back into a functional state. It is also significant that it is not the case of the petitioner that such a duty has been cast on the Bank to nurse the sick units. The entire case of the petitioner was rested only on the basis of the principle of promissory estoppel which, as stated earlier, cannot be invoked at all in this case.

8. It seems to me that it is unnecessary to consider the contention of the learned Counsel for the Bank that resort cannot be had to the principle of promissory estoppel, when even in a case where there is a contract to lend moneys, it cannot be specifically enforced. No doubt, the question how far a contract or an agreement to lend which cannot be specifically enforced, be actually enforced by applying the principle of promissory estoppel,

as has been done in the cases referred to by the learned Counsel for the petitioner, is an interesting question. But as stated already, on the facts and circumstances of this case, it is unnecessary to consider this aspect as well as to refer to the decisions cited by the learned Counsel for the Bank in support thereof.

9. In *State Bank of India, Main Branch, (SIB)-Division Cantonment, Tiruchirapalli v. J.S. Ramamoorthy* 95 L.W. 30 this Court considered the

propriety of the order of injunction passed by the Sub-Court, Tiruchi, in I.A. No. 206 of 1981 in O.S. No. 345 of 1981. It is pointed out that the

purpose of granting an injunction should be to prevent a breach of an obligation and that no obligation is cast on the Bank to lend the petitioner

with a view to keep his industry in a running condition or nursing it to run notwithstanding any act of management, misfeasance or malfeasance. In this

case, a change of management was also attempted as noticed earlier with a view to set right matters but that did not produce any result. That

shows that the management of the dependent to the affidavit was not all right. Further, the petitioner has misused the facilities extended by the Bank

and has been siphoning off funds for personal benefits as seen from paragraph 13 of the counter affidavit, which had not been denied by the

petitioner. It is also further seen that in the matter of discounting bills, the petition had entered into other transactions with other banks and did not

pay the Bank and that the realisations were also not routed through the Bank, but were siphoned off by the petitioner for its personal purposes.

This has also not been disputed by the petitioner. Inasmuch as the petitioner has not acted upto the commitments entered into by it at the time when

the Bank extended assistance, the Bank had declined to consider the case of the petitioner any further and had called upon the petitioner to repay

the amounts and had also instituted a suit for that purpose. Under those circumstances, no duty as such is cast on the Bank to consider the question

of either further extending financial assistance to the petitioner or even attempting to nurse it and revive it. Since it has earlier been found that the

principle of promissory estoppel cannot be applied on the facts of this case and no statutory duty as such has also been cast on the Bank to resort

to a nursing scheme in respect of units like the petitioner unit, a writ of mandamus as prayed for by the petitioner cannot be issued. Accordingly,

the rule nisi is discharged and the writ petition is dismissed with costs of the first respondent counsel fee Rs. 250.