IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

WP(C).No. 4754 of 2015 (T)

PETITIONER(S):

SUNEESH M.P., AGED 38 YEARS,
S/O.PADMAKSHAN, MAKKALIKKAL HOUSE,
KALLUVAYAL, MAVADI, SULTHA BATHERY.

BY ADV. SRI.P.V.GEORGE (PUTHIYIDAM).

RESPONDENT(S):
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1. RESERVE BANK OF INDIA,
REPRESENTED BY CHIEF GENERAL MANAGER,
DEPARTMENT OF OPERATIONS AND DEVELOPMENTS,
CENTRAL OFFICE, 13TH FLOOR, NCOB,
SHAHID BHAGAT SINGH MARG, MUMBAI -400 001.

2. AXIS BANK,
REPRESENTED BY BRANCH MANAGER,
SULTHAN BATHERY BRANCH,
SULTHAN BATHERY P.O., PIN-673 020.

R2 BY ADVS. SRI.PHILIP MATHEW,
SRI.JOSEPH C.VARGHESE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 4754 of 2015 (T)

APPENDIX

PETITIONER'S EXHIBITS:-

P1: TRUE COPY OF THE LOAN SANCTION LETTER DATED 30.10.2012 ISSUED BY THE 2ND RESPONDENT.

P2: TRUE COPY OF THE RENEWAL SANCTION WITH ENHANCEMENT LETTER DATED 05.09.2014 ISSUED BY THE 2ND RESPONDENT.

P3: TRUE COPY FO THE LETTER OF INTENT DATED 02.02.2015 ISSUED BY I.D.B.I. BANK.

P4: TRUE COPY OF THE CIRCULAR NUMBER DBOD DIR. BC.NO.110/13.3.00/2013-14 DATED 07.05.2014 ISSUED BY THE 1ST RESPONDENT.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

K. VINOD CHANDRAN, J.

W.P(C). No.4754 of 2015

Dated this the 28th day of July, 2015.

JUDGMENT

The petitioner is aggrieved with the foreclosure charges stipulated by the Bank as per Ext.P1 agreement. The petitioner's contention is that, the Reserve Bank of India Circular, produced at Ext.P4, would interdict the Bank from levying any such foreclosure charges, on the loan taken by the petitioner.

2. The learned counsel appearing for the 2nd respondent Bank however would contend that the Circular at Ext.P4 is not applicable to the particular loan. The learned counsel would specifically point out to Ext.P2 sanction, which indicates the loan to be an 'agricultural cash credit' and not a 'term loan'. A reading at Ext.P1 would indicate that the petitioner was granted an agricultural cash credit, having limit of Rupees Thirty lakhs. A 'cash credit' unlike a 'term loan' is a facility providing debit to the

account to the extent of the limit sanctioned by the Bank. On crossing the limit, deposit could be made and again amounts drawn to the extent sanctioned. A 'term loan', on the other hand, is a disbursal of a specific amount, which has to be repaid within a specified period. In such circumstances, Ext.P4 would not be applicable to the loan availed of by the petitioner.

3. A reading of Ext.P1 again would indicate that, it is not a loan sanctioned by the Bank on the terms of any scheme formulated by the Government or by the Reserve Bank of India. The loan transaction is based on a private contract between the petitioner and the respondent Bank and does not bring forth any element of public duty with respect to the transaction. In such circumstances, the invocation of Article 226 of the Constitution of India would not be possible, going by the decision of the Hon'ble Supreme Court in ***K.K. Saksena v. International Commission on Irrigation and Drainage and others [(2015) 4 SCC 670].***

4. Further, the learned counsel for the respondent Bank also submits that, there is a grievance redressal procedure applicable in the Bank, in which the petitioner could avail his remedy.

In view of the above reasoning, this Court would decline the exercise of discretion under Article 226 of the Constitution of India and any alternative remedy availed of by the petitioner would not be governed by the observations made herein, which are merely prima facie to decline exercise of the extraordinary jurisdiction of this Court.

The writ petition is dismissed, leaving open such remedy.

Sd/-

K. VINOD CHANDRAN,
JUDGE

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