IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

WP(C).No. 14528 of 2015 (M)

PETITIONER(S):

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1. SURESHKUMAR N.K.,
   S/O.KARUNAKARAN NAIR, RESIDING AT SOORYAKANTHI HOUSE,
   NANMINDA P.O, KOZHIKODE DISTRICT.

2. ASWANTH S.,
   S/O.SURESHKUMAR N.K., RESIDING AT SOORYAKANTHI HOUSE.
   NANMINDA.P.O, KOZHIKODE DISTRICT.

   BY ADV. SRI.B.KRISHNA MANI

RESPONDENT(S):

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1. THE SECRETARY,
   GOVERNMENT OF INDIA, MINISTRY OF FINANCE,
   DEPARTMENT OF ECONOMIC AFFAIRS, (BANKING DIVISION),
   NEW DELHI-110001.

2. THE BRANCH MANAGER,
   PUNJAB NATIONAL BANK, NANMINDA BRANCH, NANMINDA P.O.,
   KOZHIKODE DISTRICT-673 613.

   R1 BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
   ADV. SMT.T.P.SINDHUMOL
   R2 BY ADV. SRI.SANTHEEP ANKARATH, SC

   THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 14528 of 2015 (M)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 TRUE COPY OF THE CERTIFICATE DATED 18/3/2015 ISSUED BY THE PRINCIPAL OF AL-AZHAR MEDICAL COLLEGE & SUPER SPECIALITY HOSPITAL, EZHALLOOR, THODUPUZHA.

EXT.P2 TRUE COPY OF THE SECONDARY SCHOOL LEAVING CERTIFICATE OF THE 2ND PETITIONER.

EXT.P3 TRUE COPY OF THE CERTIFICATE IN RESPECT OF THE BOARD OF HIGHER SECONDARY EXAMINATIONS.

EXT.P4 TRUE COPY OF THE MEDICAL MARKS/DATA SHEET ISSUED BY THE COMMISSIONER OF ENTRANCE EXAMINATION, GOVERNMENT OF KERALA.

EXT.P5 TRUE COPY OF THE FEE STRUCTURE IN THE AL-AZHAR MEDICAL COLLEGE EZHALLOOR,THODUPUZHA.

EXT.P6 TRUE COPY OF THE APPLICATION DATED 6/4/2015.

EXT.P7 TRUE COPY OF THE COMMUNICATION DATED 8/5/2015.

EXT.P8 TRUE COPY OF THE EDUCATIONAL LOAN SCHEME DATED 28/4/2001 FORMULATED BY THE GOVERNMENT OF INDIA, MINISTRY OF ECONOMIC AFFAIRS (BANKING DIVISION).

RESPONDENT(S)' EXHIBITS:

EXT.R2(a): TRUE COPY OF THE MODEL EDUCATIONAL LOAN SCHEME FORMULATED BY THE INDIAN BANKS ASSOCIATION.

EXT.R2(b): TRUE COPY OF RELEVANT PORTION OF REPORT DTD.21.5.2015 OBTAINED BY THE 2ND RESPONDENT BANK FROM CIBIL (CREDIT INFORMATION BUREAU (INDIA_ LIMITED.

EXT.R2(c): TRUE COPY OF RELEVANT PORTION OF REPORT DTD.21.5.2015 OBTAINED BY THE 2ND RESPONDENT BANK FROM EQUIFAX.

//TRUE COPY//

P.S.TO JUDGE

Msv/

K. VINOD CHANDRAN, J

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W.P(C) No. 14528 of 2015

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Dated this the 01st day of July, 2015

JUDGMENT

The petitioners are father and son who had sought for an educational loan from the 2nd respondent but was declined the same for reason of there being no collateral security nor a valid co-obligation, which is insisted as per the educational loan scheme. The learned counsel for the petitioner submits that Ext.P8 is a scheme by which the Government of India had decided to accept the model scheme prepared by the IBA for implementation, subject to some modifications. Modification made by the Government of India is as evident from Ext.P8 which is as follows:

> (i)The condition of minimum qualifying marks in the last examination may be dropped.
> (ii) No margin may be insisted upon for loans upto Rs.4 lakh. However, for loans of higher amounts, the margin requirement may be 5% for inland studies and 15% for studies abroad.
> (iii)No security may be insisted upon for loans upto Rs.4 lakh. However, for loans above this amount, collateral security of suitable value or co-obligation of parents/guardians/third party along

> with the assignment of future income of the student for payment of instalments may be obtained.
> (iv) Loans upto Rs.4 lakh may be advanced at interest rate not exceeding PLR of the bank. Above Rs.4 lakh, the interest rate may be PLR+1%

Hence the banks cannot insist any margin for loans up to Rs.4 lakhs nor can any security be insisted for such loans.

2. The petitioners application produced at Ext.P6 obviously is for an amount of Rs.40 lakhs, with Rs. 8 lakhs sought for, in each of the years in which he would be carrying on the graduate course in MBBS with one Al-Azhar Medical College & Super Specialty Hospital, Ezhalloor, Thodupuzha. The fees prescribed by the college for each year is said to be Rs.9,94,000/-.

3. The learned counsel appearing for the respondent would also rely on the guidelines produced at Ext.R2(a). The prescription for security of which is extracted hereunder:

Security:

upto Rs.4 lakhs	Parents to be joint borrower(s) No security

upto Rs.4 lakhs	Parents to be joint borrower(s)
above Rs.4 lakhs and upt Rs.7.5 lakhs	Besides the parent(s) executing the documents as joint borrower(s), collateral security in the form of suitable third party guarantee will be taken. The bank may, at its discretion, <u>in exceptional cases</u>, waive third party guarantee if satisfied with the net-worth/means of parent/s who would be executing the document as joint borrower(s)
Above Rs.7.5 lakhs	Parent(s) to be joint borrower(s) Tangible collateral security of suitable value acceptable to bank, along with the assignment of future income of the student for payment of installments.

4. The learned counsel for the petitioner would argue that the same is by the IBA and it cannot overrule the decision of the Central Government at Ext.P8.

5. Essentially it is to be noticed that Ext.P8 is of the year 2001 and Ext.R2(a) is the extant rules of the IBA incorporated in 2012. In any event, even going by Ext.P8, it cannot be said that the denial made by the bank is bad, insofar as the loan applied for by the petitioner was far above 4 lakhs.

6. Going by the aforecited provisions of Ext.P8 and

Ext.R2(a); for a loan to the extent of which the petitioner has sought, by Ext.P6, necessarily sufficient security has to be offered which the petitioner has not offered along with the application. Further, in addition to the security as stipulated in the aforesaid provisions, the parent has to join as a co-obligant. Herein the first petitioner, the father of the 2^{nd} petitioner has offered to execute a co-obligant agreement but however, the Bank is not satisfied with the offer, for reason of the finding of the CIBIL (Credit Information Bureau India Limited) which classifies the first petitioner as a consistent defaulter, who had availed loans from various banks and defaulted the same, which loans eventually had to be written off. The Bank hence is not satisfied with the co-obligation offered by the first petitioner, nor is any collateral security offered by the petitioner, as is necessitated by the scheme, formulated by the Indian Bank Association and applicable to the 2^{nd} respondent Bank.

7. The learned counsel for the petitioner thus would

contend that the petitioner would now, for the present year, limit the request of loan to Rs.4 lakhs which could be disbursed without any security. The petitioners also contend that in the next year, a mortgage made of the property owned by the 2nd petitioner's mother would be released and the same would be mortgaged for release of the balance amounts. However, the learned counsel for the bank submits that there can be any piecemeal sanction of the loans and the loan applied for and sanctioned is for the academic course, running the full term of the course. The said contention of the Bank found quite reasonable .

8. The petitioner also offer second mortgage, which however, the Bank declines and it is not for this Court to persuade the Bank to accept the second mortgage.

Writ petition would stand dismissed.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

jma //true copy//

P.A to Judge