HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.Nos.39793 and 39794 of 2015

COMMON ORDER:

Heard.

2. Both these writ petitions are filed by the same petitioner against different respondents seeking release of mortgaged property covered by different loan agreements by seeking a declaration that the demand for additional amount by the respondents, as a pre-condition, to release the mortgaged properties is illegal, arbitrary and highhanded and seeks consequential directions against respective respondent banks.

3. For the sake of convenience, the facts in W.P.No.39793 of 2015 are noticed.

4. The petitioner claims that it was granted credit facility year wise viz., working capital, demand loan, cash credit and other limits by respondent bank, under a sanction letter. The petitioner claims that it has made regular payments against the said loans apart from keeping a sum of Rs.3 crores as FDR with the respondent bank and the relation between the petitioner and the respondent bank is very cordial, as the petitioner has been paying interest in time and also all the dues in time. It is stated that since major shares of the petitioner are purchased by Foreign Company, the petitioner is required to get the property released.

5. The petitioner claims that though it has cleared the entire liability and requested the respondent Bank to release mortgaged property and issue 'No Due Certificate', under a letter, dated 23-11-2015, the 1st respondent is stated to have been demanding Rs.26,00,000/- towards pre-closure charges, a sum of Rs.3,25,000/- towards processing charges and a further sum of Rs.4,24,175/- on the sanctioned amount on the ground that there is no further

renewal of loans. The aforesaid demands are stated to be totally illegal and contrary to law and as there is urgency of getting release the mortgaged properties offered as a security for the loans aforesaid, the present writ petition is filed.

6. During hearing of the writ petitions, it was noticed that the respondent banks in both the writ petitions are Private Banks and as such, the remedy under Article 226 of the Constitution of India being not available against Private Banks, learned counsel for the petitioners was requested to explain the maintainability of the writ petitions first.

7. It is not in dispute that the Banks in each of these writ petitions are Private Banks. Learned counsel for the petitioner cited three decisions viz., ***CENTURY SPINNING AND MANUFACTURING COMPANY LIMITED AND ANOTHER Vs. THE ULHASNAGAR MUNICIPAL COUNCIL AND ANOTHER[1], U.P.STATE COOPERATIVE LAND DEVELOPMENT BANK LTD. Vs. CHANDRA BHAN DUBEY AND OTHERS[2] and ZONAL MANAGER, CENTRAL BANK OF INDIA Vs. DEVI ISPAT LIMITED AND OTHERS[3]*** in support of his plea of maintainability of writ petitions.

8. I have deeply considered the submissions, as aforesaid. However, I am unable to agree with the learned counsel for the petitioner and in my view, the writ petitions cannot be maintained against respective respondents, as the respective respondents do not fall within the definition of State as envisaged under Article 12 of the Constitution of India.

9. The reasons for the above conclusions are under:-

10. The case first cited by the learned counsel for the petitioner arises out of a writ petition filed to restrain Ulhasnagar Municipal Council from enforcing Octroi Rules and in that context, there was no controversy in the decision with regard to public body or authority, as the respondent therein, undoubtedly was a public body falling under Article 12 of the Constitution of India.

11. The decision second cited related to a relief sought for against a Co-operative Land Development Bank registered under the U.P.Co-operative Societies Act, 1965, wherein it was held that the control of the State Government on the appellant therein is all pervasive and the business and management of the said Bank was under direct control of the State Government. In that background, it was held that 'any person or authority' used in Article 226 cannot be confined only to statutory authorities and instrumentalities of the State but they also cover any other person or body performing public duty.

12. In the decision third cited related to actions of a public sector bank and since the said Bank had exercised public functions, it was, therefore, held that the Bank in that case being a public sector bank and discharging public functions, is a State under Article 12 of the Constitution of India. Hence, the question as posed in the present writ petitions did not arise for consideration before the Hon'ble the Supreme Court.

13. In the present case, the respondent banks are private banks and their functions are entirely in the nature of commercial transactions between the Bank and its customers, which include the petitioner.

14. The terms and conditions of the loan is, therefore, a contractual matter between the petitioner and the respective respondent bank. Any dispute between the two with regard to liability or the mode in which the mortgaged properties are to be released is squarely covered by the loan agreements between the parties. There is nothing on record at the moment to ascertain whether such contract provides mode for resolution of the dispute. However, in any case, the jurisdiction of this Court under Article 226 of the Constitution of India cannot be exercised with regard to private entities and there is nothing to indicate that the said private banks had discharged any public functions and, on the contrary, the facts of the case show that the dispute between the parties is purely arising out of loan transactions and such dispute being in the realm of private law and no public law element having

been involved, both the writ petitions are liable to be dismissed as not maintainable.

15. Accordingly, the writ petitions are dismissed. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

VILAS V.AFZULPURKAR, J

Date: 31-12-2015
Prv

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.Nos.39793 and 39794 of 2015

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Prv

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[1] 1970 (1) Supreme Court Cases 582

[2] (1999) 1 Supreme Court Cases 741

[3] (2010) 11 Supreme Court Cases 186