IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P.No.8804 of 2014
and
M.P.No.1 of 2014

M/s.Mercury Transports,
represented by its Proprietor,
Abdul Hakim,
having office at Old No.102, New No.211,
Linghi Chetty Street,
Chennai-600 001. .. Petitioner

Vs.

1.The Secretary to Government,
Ministry of Finance,
Government of Tamil Nadu,
Chennai-09.

2.The Secretary to Government,
Ministry of Finance,
Union of India,
New Delhi.

3.The Reserve Bank of India,
represented by its Regional Head,
No.16, Fort Glacis Building,
Near Secretariat & Opposite Port Trust,
Rajaji Salai, Parrys,
Chennai-600 001.

4.HDFC Bank Ltd.,
represented by its Managing Director,
HUL House, H T Parekh Marg, 165-166,
Back Bay Reclamation,
Church Gate,
Mumbai-400 020.

5.The HDFC Asset Management Co. Ltd.,
represented by its Business Head,
First Floor, ITC Centre, 760, Anna Salai,
Chennai-600 002.

6.The HDFC Bank,
represented by its Branch Manager,
No.3, McDowell House, 2nd Line Beach,
Parrys Corner, Chennai-600 001. .. Respondents

The writ petition is filed under Article 226 of the Constitution of India praying for the issue of a writ of mandamus, directing the respondents to consider and pass appropriate orders on the petitioner's representation, dated 12.3.2014.

For Petitioner : No appearance
For Respondent No.1 : Mr.R.Ravichandran, AGP

For Respondent No.2 : Dismissed vide order dt.01.10.2015

For Respondents 3 and 5 : No appearance

For Respondents 4 and 6 : Mr.C.Mohan for M/s.King & Patridge.

- - - - -

ORDER

There is no representation on behalf of the petitioner, as well as the respondents 3 and 5. Heard the learned counsels appearing on behalf of the respondents 1,4 and 6.

2 This writ petition has been filed by the petitioner, praying that this Court may be pleased to issue a Writ of Mandamus, directing the respondents to consider and pass appropriate orders on the representation of the petitioner, dated 12.3.2014.

3 The petitioner has stated that the petitioner is a Firm, carrying on the business in the field of transport. It, primarily, handles the goods, at Chennai Port Trust. The petitioner firm had borrowed a commercial vehicle loan, from the sixth respondent, for the purchase of 13 commercial vehicles. However, due to the severe financial crunch, the petitioner firm had not been in a position to pay back the loan availed by it, by way of equated monthly installments. Therefore, the respondents 5 and 6 had initiated an action against the petitioner firm, for the recovery of the loan availed by it. While so, the petitioner had given a representation to the respondents 3 and 4, on 12.3.2014, for waiver of the interest and to extend the time for the payment of the remaining equated monthly installments, by rescheduling them. However, the

respondents had not replied to the said representation, till date. In such circumstances, the petitioner has preferred the present writ petition before this Court.

4 The learned counsel appearing on behalf of the respondents 4 and 6 had submitted that the said Bank is a fully owned private bank and it does not fall under the definition of "the State", under Article 12 of the Constitution of India. As such, the present writ petition filed by the petitioner is not maintainable.

5 The learned counsel appearing on behalf of the respondents 4 and 6 had placed before this Court a decision of the Supreme Court, made in Federal Bank Ltd. Vs. Sagar Thomas and others, reported in (2003) 10 SCC 733, in support of his claim that the writ petition, under Article 226 of the Constitution of India, cannot be maintained against the respondent Bank.

6 He had also placed before this Court a decision of the Division Bench of this Court, made in Tamil Nadu Industrial Investment Corporation Ltd., rep by its Managing Director Vs. Millenium Business Solutions Pvt. Limited, rep by its Managing Director and another [ W.A.No.2690 of 2004, dated 20.12.2004] and paragraphs 16 and 18 of the said judgment read as follows :

> "16.A loan is granted in terms of the contract, and grant of one time settlement or re-scheduling of the loan amount is really a modification of the contract, which can only be done by mutual consent of the parties, vide Section 62 of the Contract Act, 1872. The Court cannot alter the terms of the contract.
>
> x x x x x x x x x x x x
>
> 18.Before parting with the case we would like to mention that recovery of tens of thousands of crore rupees of loans of banks and financial institutions has been held up by Court orders under Article 226 proceedings which were really unwarranted. However, much sympathy a Court may have for a party, a writ Court must exercise its jurisdiction on well settled principles, and not on mere sympathy or compassion. No doubt, there may be hardship to a party, but unless violation of law is shown the Court cannot interfere. Holding up recoveries of loans by unwarranted Court orders is causing incalculable harm to our economy, since unless the loan is recovered a fresh loan cannot be granted to needy persons. The Courts must keep these considerations in mind."

7 The learned counsel had also relied on a decision of the Division Bench of the Madurai Bench of the Madras High Court, dated 28.10.2013, made in W.P.(MD)No.8499 of 2013, and paragraphs 4 and 5 of the said decision read as follows :

> "4.Per contra, the learned Counsel appearing for the respondent Bank had submitted that the writ petition filed by the petitioner is not maintainable, under Article 226 of the Constitution of India, in view of the decision of the Honourable Supreme Court, in United Bank of India v. Sathyawathi Tondon, reported in 2010 8 MLJ 1069 and in GM, Sri Siddeshwara Co-operative Bank Limited and another vs. Sri Ikbal and others reported in 2013 6 MLJ 571 (SC).
>
> 5.In view of the submissions made by the learned Counsels appearing for the parties concerned, we are of the considered view that for the present the writ petition, filed by the petitioner, is not maintainable."

8 In view of the averments made in the affidavit filed in support of the writ petition and in view of the submissions made by the learned counsel appearing on behalf of the respondents 4 and 6 and in view of the decisions cited supra, this Court is of the considered view that the present writ petition, filed by the petitioner, is not maintainable. The respondent Bank, being a private entity, does not fall under the definition of "the State", under Article 12 of the Constitution of India. The decision of the Supreme Court, in Federal Bank Ltd. Vs. Sagar Thomas and others lends support to the said proposition. Further, a contract, entered into between the petitioner and the respondent Bank, cannot be enforced, amended or modified, by the directions issued by this Court, under Article 226 of the Constitution of India. In such circumstances, this Court is of the considered view that the writ petition is not maintainable. Hence the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.



-s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

To

1.The Secretary to Government,
   Ministry of Finance,
   Government of Tamil Nadu,
   Chennai-09.

2.The Secretary to Government,
   Ministry of Finance,
   Union of India, New Delhi.

3.The Regional Head,
   The Reserve Bank of India,
   No.16, Fort Glacis Building,
   Near Secretariat & Opposite Port Trust,
   Rajaji Salai, Parrys,
   Chennai-600 001.

+ 1 cc to M/s.King and Patridge, Advocat SR 42335

nrjk(co)
prk8/8 W.P.No.8804 of 2014