IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.02.2016

Date of verdict: 11.3.2016

CORAM

THE HONOURABLE MR. **JUSTICE R.SUBBIAH**

Writ Petition No.35108 of 2015

S.Meivel ... Petitioner

vs.

1.The General Manager,
Reserve Bank of India,
Fort Glacis,
No.16, Rajaji Salai,
Chennai-1.

2.The Manager,
HDFC Bank Ltd.
Namakkal-637 001. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of writ of mandamus, directing the second respondent to issue a No Objection Certificate for the cancellation of the Hire Purchase Agreement with petitioner in Loan Account No.16512804 pertaining to TN 28 AH 1397 and award costs.

For Petitioner : Mr.G.Murugendran

For Respondents : Mr.G.Ashok Pathi, for
M/s.Pass Associates.

ORDER

The petitioner has come up with the present writ petition for a mandamus, directing the second respondent to issue a No Objection Certificate for the cancellation of the Hire Purchase Agreement in Loan Account No.16512804 pertaining to TN 28 AH 1397 and award costs.

2. It is the case of the petitioner that he had availed a commercial vehicle loan from the respondent bank under loan agreement No.16512804 under Hire Purchase Agreement to TN 28 AH 1397. The said vehicle has been hypothecated to the bank. The respondent bank had financed a sum of Rs.16,92,000/- and after the deduction of some charges, the amount of Rs.16,89,348/- was disbursed to the petitioner on 30.4.2010. As per the agreement, the EMI amount is Rs.43,258/- per month and the total tenure was 47 months. The instalment started from 1.6.2010 and ended on 1.4.2014. The petitioner paid the entire dues along with interest on 8.5.2014 without any default. Thereafter, the petitioner approached the respondent bank requesting them to issue No Objection Certificate for cancellation of the Hire Purchase Agreement. Though the petitioner has paid all the dues, now the respondent bank refused to perform their obligation of providing No Objection Certificate. Earlier,

the petitioner had signed as a guarantor for one K.Chitra Devi, who had availed a Tractor Trailor loan from the bank for a sum of Rs.27,28,000/- on 3.1.2012. The said K.Chitra Devi failed to repay the loan amount. Since she was not able to pay the loan amount, the said Chitra Devi had surrendered her vehicle to the respondent bank. Even thereafter, the respondent bank refused to provide No Objection Certificate to the petitioner. Hence, the petitioner has come up with the present writ petition seeking a direction to the respondent bank to issue a No Objection Certificate for the cancellation of the Hire Purchase Agreement in Loan Account No.16512804 pertaining to TN 28 AH 1397 and award costs.

3. Counter affidavit has been filed on behalf of the second respondent, wherein, it has been stated that the petitioner had availed loan under loan account No.16512804. That apart, he has also stood as a guarantor for another loan borrowed by one K.Chitra Devi under loan account No.204398763 dated 3.1.2012. Since the said K.Chitra Devi committed default in payment of the said loan availed by her, the second respondent was constrained to initiate recovery proceedings in O.A.No.231 of 2013 on the file of the Debts Recovery Tribunal-II as against the said K.Chitra Devi and one Suchindran and the petitioner

herein, being the guarantor in the said agreement and the said OA is pending adjudication. Both the agreements, where the petitioner is a borrower and guarantor respectively contain a clause to have a lien, which reads as follows:-

" 19.SET-OFF AND LIEN

19.1. The Borrower expressly accepts that if the Borrower fails to pay any monies when due or which may be declared due prior to the date when it would otherwise have become due or commits any other default under any agreement (including this Agreement) with the Bank under which the Borrower is enjoying any financial/credit/other facility; then in such event the Bank shall without prejudice to any of its specific rights under each of the agreements, be absolutely entitled to exercise all or any of its rights under any of the Borrower's Agreement (including this Agreement) with the Bank at the said discretion of the Bank.

19.2 Until the ultimate balance owing by the Borrower to the Bank has been paid or satisfied in full the

> Bank shall have a lien on any property and assets of the Borrower from time to time in the possession of the Bank and a charge over all stocks, shares and marketable or other security from time to time and get any or all of them registered in the name of the Bank or its nominees whether the same be held for safe custody or otherwise. "

Admittedly, the petitioner is a guarantor to the loan account No.20439863 and the recovery proceedings in O.A.No.231 of 2013 is pending adjudication on the file of the Debts Recovery Tribunal-II, Chennai. Therefore, by invoking the lien clause as agreed under the loan account No.20439863, the second respondent has withheld the issuance of No Objection Certificate pertaining to the loan account No.16512804. Thus, the second respondent sought for the dismissal of the writ petition.

4. Learned counsel appearing for the petitioner submitted that though the petitioner had availed commercial vehicle loan from the respondent bank under loan agreement No.16512804, the respondent bank themselves admitted that the petitioner has cleared his entire loan amount and hence, they are bound to provide No

Objection Certificate to the petitioner for cancelling the Hire Purchase Agreement. But, they are withholding No Objection Certificate stating that since the petitioner stood as a guarantor for another loan availed by one K.Chitra Devi, unless and until the said loan amount availed by K.Chitra Devi is cleared, the petitioner is not entitled to get No Objection Certificate. In this regard, learned counsel appearing for the petitioner submitted that so far as the loan amount due from the said K.Chitra Devi is concerned, since already OA is pending before the Debts Recovery Tribunal – II, Chennai, the respondent bank has to work out their remedy in the said OA. Moreover, the respondent bank cannot withhold No Objection Certificate for the outstanding dues in respect of another loan amount availed by another person. Thus, he sought for a direction to the respondent to issue No Objection Certificate to the petitioner.

5. On the other hand, learned counsel appearing for the respondent bank submitted that the petitioner stood as a guarantor for the loan availed by one K.Chitra Devi. In fact, the petitioner had signed the loan agreement dated 30.4.2010. As per clause 19 of the agreements, the respondent bank is having a lien on the vehicle purchased by the petitioner under loan account No.16512804. Thus,

he sought for the dismissal of the writ petition.

6. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record, particularly, clause 19 of the agreements. As per clause 19, the respondent bank is having a lien over the vehicle purchased by the petitioner in account No.16512804. Hence, as contended by the respondent bank, unless and until the loan amount availed by K.Chitra Devi is cleared either by her or by the petitioner, who stood as a guarantor, this Court cannot give a direction to the respondent bank to issue No Objection Certificate to the petitioner. Therefore, I do not find any merit in the writ petition and the writ petition is liable to be dismissed.

7. Accordingly, the present writ petition is dismissed. No costs.

11.03.2016

Index:Yes/No
sbi

To

1.The General Manager,
Reserve Bank of India,

Fort Glacis,
No.16, Rajaji Salai, Chennai-1.

R.SUBBIAH, J

sbi

Pre-delivery order in
W.P.No.35108 of 2015

DATED: 11.03.2016