BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.[MD].No.574 of 2017
and
C.M.P(MD).No.4739 of 2017

State Bank of India,
Represented by its Chief Manager,
State Bank of India,
No.169E, Kamarajar Salai,
Madurai - 625 009. : Appellant

Vs.

M/s.Dhevaki Diagnostics Private Ltd.,
Represented by its Managing Director Dr.P.S.Nagendran
No.26, Theni Main Road, Arasaradi,
Madurai - 625 016. : Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 15.03.2017 made in W.P.(MD).No.11488 of 2010, on the file of this Court.

Prayer in WP(MD)No.11488/2010:-

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ order or direction or any other writ in the nature of a Writ of Certiorarified Mandamus calling for the records of impugned communication dated 17.08.2010 issued by the respondent and quash the same and consequently direct the respondent bank to refund the sum of Rs. 17,16,331/- with interest to the petitioner and pass such further or other orders as this Hon'ble Court may deem fit.

For Appellant : Mr.S.Sethuraman

JUDGMENT
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[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

Heard Mr.S.Sethuraman, learned Standing Counsel appearing for the appellant and perused the materials placed on records.

2. The appellant is aggrieved by the order dated 15.03.2017 made in W.P.(MD).No.11488 of 2010.

3. The said Writ Petition was filed by the respondent herein challenging the proceedings of the appellant bank dated 17.08.2010 and to direct the appellant bank to refund a sum of Rs.17,16,331/- with interest, which was charged as pre-closure charges. The Writ Court, after considering the entire factual matrix, pointed out that as far as pre-closure charges are concerned, if the customer has availed loan and loan is closed pre-maturely, naturally, the bank would be entitled to the charges, as per the contract entered into between the parties. But, insofar as the upfront fee is concerned, the same could be levied only when there is a commitment or undertaking by the other party to pay the same. In the case of the respondent/writ petitioner, though the loan was sanctioned, it was not disbursed and it was not disputed by the appellant bank that the respondent has not availed even a single pie of the loan of Rs.6.80 crores and therefore, it was held that the appellant bank was not entitled to charge 1.5% of the sanctioned loan towards upfront fee of the sanctioned loan.

4. We find that the reason assigned by the Writ Court is perfectly in order and if the appellant bank is permitted to charge 1.5% of the sanctioned loan as upfront fee in respect of the loan, which was not availed by the respondent, it would amount to clear case of infringement. Furthermore, no contractual liability has arisen in the instant case, as the loan was not disbursed. Thus, we do not find any reason to interfere with the order passed by the Writ Court.

5. In the result, the Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(Writs)

/True Copy/

Sub-Assistant Registrar

+One cc to Mr.S.Sethuraman, Advocate, SR.No.58779
NB
RL/2C/2P/JC/SAR1/16/6/2017

JUDGMENT MADE IN

W.A.[MD].No.574 of 2017

07.06.2017