BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.12.2018
CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE C. SARAVANAN

W.A(MD).No.1640 of 2018 and
CMP(MD).No.11387 of 2018

1.Small Industries Development Bank of India (SIDBI),
rep. by its Chairman Cum Managing Director,
SIDBI Head Office,
SIDBI Towner, 15, Ashok Marg,
Lucknow - 226 001,
Uttarpradesh.

2.The General Manager,
Audit & Fraud Management Cell,
Small Industries Development Bank of India (SIDBI),
rep. by its Chairman Cum Managing Director,
SIDBI Head Office,
SIDBI Tower, 15, Ashok Marg,
Lucknow - 226 001,
Uttarpradesh.

3.The General Manager,
Regional Head,
Small Industries Development Bank of India (SIDBI),
No.72, May Flower, E Castle I Floor,
Dr.Balasundaram Road,
Coimbatore - 600 018.

4.The Assistant General Manager,
Small Industries Development Bank of India (SIDBI),
MADITSSIA Auditorium Ground Floor,
No.1A-4A, Dr. Ambedkhar Road,
Madurai - 625 020. : Appellants

-Vs-

J. Prabakaran : Respondent

PRAYER: This Writ Appeal is filed under Clause 15 of Letters Patent Act, 1865 against the order dated 31.07.2018 passed in W.P.No.1070 of 2018.

Prayer in WP(MD). 1070 of 2018 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari calling for the records pertaining to the impugned order

passed by the 2nd respondent in SIDBI HO No.2018JAN04/L00083622/A & FMC, dated 04.01.2018, deciding to forward the petitioners name to IBA for inclusion in the caution list and quash the same.

For Appellants : Mr.J. Alaguram Jothi

For Respondent : Mr. R. Subramanian

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JUDGMENT

(Judgment of this Court was made by S.S. SUNDAR, J.,)

This Writ Appeal is filed by the appellants' Bank as against the order of the learned Single Judge allowing the Writ Petition. The respondent herein, who is the petitioner in Writ Petition, filed the Writ Petition in W.P.No.1640 of 2018 to quash the order passed by the second appellant informing the respondent that it has decided to forward the name of the respondent to the Indian Bank Advocates Association for inclusion in the caution list. It is stated that the proceedings of the second appellant was in terms of Para 8.12.4 of the Reserve Bank of India (Frauds Classification and reporting by commercial Banks and Select FIs) Directions, 2016. The writ petition was allowed by order dated 31.07.2018.

2. The respondent is an Advocate and his name is also included in the panel Advocates of the appellants' Bank. The respondent has given an opinion to the Bank about the marketable title of the borrower. The Bank has later found that the security offered by the borrower was too low compared to the report of the valuer. It is further stated by the Bank that the property had not been properly valued and that the respondent has given opinion without inspecting the property and the revenue documents relied on by respondents are bogus. It is the case of the appellants' Bank that the information given by the respondent was not only regarding the marketable title of the property and also with regard to the aspect that the property which was offered as a security has no proper approach road to reach the property. The learned counsel appearing for the appellants' Bank has referred to the opinion of respondent which runs as follows:-

> "*(m) On 08.12.2013, I visited the property under scrutiny, which is situated within the limits of Tirunelveli Corporation, as per the certificate issued by the Tahsildar, Tirunelveli Taluk and the property is in the possession of the present title holder Mr.M. Sankaran. A 23 Feet wide Road is situated on the East of the property under Scrutiny the present title holder has contributed 2.05 cents cut of 37 cents for formation of road on the East. The V.A.O. has also*

> *issued a Sketch showing the Property under scrutiny with road on the East and other properties on the North, South and West. The Certificate dated 05.11.2013, issued by the Tahsildar, Tirunelveli Taluk and the Sketch issued by the V.A.O., produced for my reference, is on file."*

3. Apart from the opinion from the marketable title of the borrower, the respondent has also given an opinion that the borrower is in physical possession and enjoyment of the property with proper approach road which was the subject matter of opinion. Referring to this, the learned counsel appearing for the appellants' Bank submitted that Bank has got every right to take a decision in this matter. The impugned communication reads as follows:

> *"Please refer to your letter dated June 09, 2016 in response to our letter dated May 05, 2006, seeking clarification on the issues relating to the title investigation of the immovable property offered by M/s. SMJ Jewellary. It is advised that your submission / clarifications vide your above referred letter, was examined in terms of RBI/IBA guidelines on the subject.*
>
> *On careful consideration of your submission / clarifications, it has been decided to forward your name to IBA for inclusion in the caution list."*

4. The learned counsel also pointed out that this communication is based on the Reserve Bank of India guidelines by exercising the power conferred under Section 35A of the Banking Regulation Act, 1949. Clause 8.12.4 and 8.12.5 of the Reserve Bank of India (Frauds Classification and reporting by commercial banks and select FIs) Directions, 2016, are relevant and extracted hereunder:

> *"8.12..4: In addition to above borrower - fraudsters, third parties such as builders, warehouse / cold storage owners, motor vehicle / tractor dealers, travel agents, etc., professionals such as architects, valuers, chartered accountants, advocates, etc., are also to be held accountable if they have played a vital role in credit sanction / disbursement or facilitated the perpetration of frauds. Banks are advised to report to Indian Banks Association (IBA) the details of such third parties involved in frauds.*
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> *8.12.5 Before reporting to IBA, banks have to satisfy themselves of the involvement of third parties concerned and also provide them with an opportunity of being heard.*

In this regard the banks should follow normal procedures and the processes followed should be suitable recorded. On the basis of such information, IBA would, in turn, prepare caution lists of such third parties for circulation among the banks."

5. Before issuing impugned communication to the respondent, the appellants' Bank has sent a letter calling upon the respondent to give his comments regarding the investigation about the collateral security offered by M/s. SMJ Jewellry as security for the loan obtained. It is admitted that the respondent has given an opinion about the title of the property which were offered as security for the loan advanced by the appellants' Bank to the borrower viz., M/s. SMJ Jewelry. After investigation the appellant Bank sent a letter pointing out certain discrepancies in the boundaries and the fact that the property under scrutiny is without access (land locked). The respondent was asked to furnish his comments. The respondent Advocate has given a detailed reply dated 09.06.2016. However, without considering the contents of the explanation / reply given by the respondent / Advocate, the first appellant's Bank issued the impugned communication. It is admitted that having regard to the nature of allegation against the respondent we do not go into the detail of explanation offered. However, we are able to see that the explanation offered by the respondent are relevant and there is no possibility of coming to the conclusion that the explanation offered by the respondent proves his involvement in any fraud in collusion with the borrower. The Bank had no materials involving the respondent in any fraud. The opinion of the respondent is considered before passing the impugned order / communication. Opinion is given on the basis of records submitted by the borrower. The valuation was done by the valuer. The existence of approach road was confirmed by the respondent based on certain documents issued by local body and revenue authority. The communication which is impugned in the Writ Petition, is in the nature of blacklisting the respondent as if he is involved in a fraud against the Bank by giving a false opinion in collusion with the borrower. Absolutely there is no material available or produced before this Court to show that the respondent is involved or found involved in any fraud in collusion with borrower.

6. The learned Single Judge after considering the First Information Report and the Charge Sheet that was filed by the CBI, allowed the Writ Petition specifically holding that the respondent was not shown as accused in the alleged fraud. The learned Single Judge of this Court relied upon the Judgment of the Hon'ble Supreme Court reported in ***2012 (9) SCC 512 (Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao)*** and found that there is no prima facie case against the respondent for which action has been initiated against the respondent. The Hon'ble Supreme Court in the above Judgment has held as follows:

"27. In the banking sector in particular, rendering

of legal opinion for granting of loans has become an important component of an Advocate's work. In the law of negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skills. A lawyer does not tell his client that he shall win the case in all circumstances. Likewise, a physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of professional can give or can be given by implication is that he is possessed of the requisite skill in that branch of profession which he is practicing and while undertaking the performance of the task entrusted to him, he would be exercising his skill with reasonable competence. This is what the person approaching the professional can expect. Judged by this standard, a professional may be held liable for negligence on one of the two findings viz., either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess."

7. The appellants in this case relied upon the Reserve Bank of India guidelines and found that the respondent's name should be forwarded to IBA to include his name in the caution list which is like blacklisting the person to prevent him being empaneled in other Banks. The Hon'ble Supreme Court in the case of blacklisting has expressed that blacklisting will result in civil death in the field of contract. Hence, it was further held that there should be observance of principles of natural justice.

8. When the Bank has taken a decision to initiate such action they should issue proper show cause notice containing the specific charges against whom the decision was proposed and after giving sufficient opportunity. If there are materials to show the involvement of the respondent in such fraud or collusion action can be taken. In this case, the impugned order has been passed by the Bank without any materials. The order is cryptic. Before issuing the impugned letter, respondent was asked to comment about the title verification and no allegation of fraud or collusion at that time. When the Advocate gives an opinion, the opinion is only regarding the marketable title of the borrower in relation to the property which is being offered as security. The opinion is based on the documents submitted to the Advocate. Mere inefficiency or by relying upon a statement about some thing which is not required from him, cannot be a ground to presume that the Advocate is involved in a fraud or collusion. In such circumstances, this Court is of the view that order of the learned Single Judge is valid and justified. We do not find any other reason to interfere with the order of the learned Single Judge.

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

Sd/-
Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

Trp

+1CC to Mr.J.ALAGUMANI , Advocate SR.No.100591.

+1CC to Mr.R.SUBRAMANIAN , Advocate SR.No.100570.

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