BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.04.2019
CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.5579 of 2018
and
WMP(MD)No.5475 of 2018

K.Hemanth Kumar ... Petitioner

Vs.

1.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,
Uttar Pradesh.

2.The General Manager,
Audit & Fraud Management Cell,
Small Industries Development Bank of India (SIDBI),
SIDBI Head Office, SIDBI Tower,
15, Ashok Marg,
Lucknow - 226 001, Uttar Pradesh.

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

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

5.Indian Banks' Association, (IBA),
Rep.by its Chairman,
World Trade Centre Complex,
Centre-I Building, 6th Floor,
Cuff Parade, Mumbai - 400 005.

6.Reserve Bank of India,
Rep.by its Chief General Manager
and Secretary,
16th Floor, Central Office Building,
Sahith Bhagat Singh Marg,
Mumbai – 400 001. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the 2nd respondent in SIDBI HO No.2018FEB21/L00092300/A&FMC, dated 21.02.2018, deciding to forward the petitioner's name to the 5th respondent for inclusion in the Caution List and quash the same.

For Petitioner : Mr.M.Saravanan

For R1 to R4 : Mr.J.Alaguram Jothi

ORDER

Heard the learned counsel on either side.

2.The writ petitioner is a practicing lawyer. In response to a request from the fourth respondent, the writ petitioner issued a legal scrutiny report for a landed property bearing S.No.220/A1B and S.No.220/B1 of Pettai Village, Tirunelveli Taluk owned by one A.Balamurugan and another land in S.No.408/2C of Ettankulam Village, Tirunelveli Taluk owned by one M.Sankaran. Based on the writ petitioner's report that the applicants have a marketable title, loans appear to have been disbursed. But, they later became non performing assets. When the Bank rechecked the documents submitted by the borrower, they found that false balance sheets were submitted. The case was handed over to CBI who have initiated prosecution against the borrower and the auditor and the same is pending in C.C No.2 of 2017 on the file of the learned Chief Judicial Magistrate, Madurai. The writ petitioner is figuring as the prosecution witness. At this stage, the fourth respondent issued a letter dated 11.05.2016 to the writ petitioner calling upon him to offer his comments with regard to the title investigation report dated 29.01.2015 submitted to SIDBI. The writ petitioner offered his reply dated 23.01.2017. Not satisfied with the same, the impugned communication dated 21.02.2018 has been issued informing the writ petitioner that it has been decided to forward his name to Indian Banks' Association for inclusion in the caution list. Questioning the same, this writ petition has been filed.

3.It is true that the Reserve Bank of India has now issued a Master Circular which provides for even placing professionals in the caution list. But then, the procedure has been laid down in 8.12.4 and 8.12.5 of the Master Circular which read as under :

> "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. and 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.
>
> 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 suitably recorded. On the basis of such information, IBA would, in turn, prepare caution lists of such third parties for circulation among the banks."

4.In the case on hand, no doubt SIDBI issued a letter calling upon the writ petitioner to offer his comment. The writ petitioner has furnished a detailed reply. But, there is nothing on record to indicate that SIDBI has satisfied itself about the involvement of the writ petitioner in the fraud committed by the borrower. In fact, even in the prosecution by CBI, the writ petitioner is figuring only as a prosecution witness. Admittedly, the writ petitioner has not been provided with an opportunity of personal hearing. Since the procedure laid down in the Master Circular issued by the Reserve Bank of India has not been followed, the communication impugned in this writ petition will have to be necessarily quashed. It is accordingly quashed. However, the second respondent is at liberty to follow the procedure laid down in the aforesaid master circular before taking further action.

5.With this liberty to the second respondent, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

+1cc to Mr.J.Alaguram Jothi,Advocate, SR.No. 63315

+1cc to Mr.R.Subramanian,Advocate, SR.No.63239

skm

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NA (24.07.2019) 4P : 3C