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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 9th August, 2019.*

\+ W.P.(C) 3234/2019 & CM APPLs. 14857-58/2019

ABHIJIT MISHRA ..... Petitioner

Through: Petitioner-in-person.

Versus

NATIONAL HOUSING BANK & ANR ..... Respondents

Through: Mr. S.L. Gupta & Mr. Aditya Vikram Gupta, Advs. for R-1.

Mr. Krishnan Venugopal, Sr. Adv. with Mr. Ajay Kohli, Mr. S.S. Sobti, Ms. Pooja Vohra, Ms. Astha Garg & Ms. Deepanshi Ishrar, Advs. for R-2/ PNBHFL.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

O R D E R

: **D.N.PATEL, Chief Justice** *(Oral)*

CM APPLs. 14857/2019 *(exemption)* **& 14858/2019** *(exemption)*

Allowed, subject to just exceptions.

Both the applications stand disposed of.

W.P.(C) 3234/2019

1. This so called Public Interest Litigation has been preferred with the following prayers:

> *"a) Writ , order or direction in nature of Mandamus or any other appropriate writ, order or directions to the respondents particularly National Housing Bank To audit and investigate the PNB Housing Finance Limited for the default in compliance of the Master Circular of the National Housing Bank i.e. NHB (ND)/DRS/Policy Circular No.75/2016-17 Dated July 1, 2016 and NHB(ND)/DRS/Pol-No.58/2013-14 dated November 18,*

2013 under the provision of the Section 31, 32, 33 and 34 of the National Housing Bank Act;

b) To exercise the provision of the section 33A of the National Housing Bank Act to prohibit acceptance of deposit by the PNB Housing Finance Limited for the failure to comply with the Master Circular of the National Housing Bank;

c) To take appropriate actions and award penalty to the PNB Housing Finance Limited under the section 49, 50, 51 and 52A of the National Housing Bank Act for the failure to comply with the Master Circular of the National Housing Bank;

d) To take cognizance of the failure of PNB Housing Finance Limited in compliance to the section 23 of the SARFAESI Act and rule 4, sub-rule 2D of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Central Registry) Amendment Rules, 2016 as published in the Extraordinary Gazette of India G.S.R. 102(E) dated 22nd January 2016 by the Department of Financial Services and take appropriate actions under section 27 and 29 of the SARFAESI Act.

e) To make rules and regulations for the Tripartite Agreement and fiduciary responsibility of the Housing Finance Companies towards the housing project monitoring for efficient financial system under the provision of the 54A and 55 of the National Housing Bank Act;

f) To Absolve the PNB Housing Finance Limited home loan customers from the liability towards those loan that have been made by the PNB Housing Finance in contravention and default of the Master Circular of the National Housing Bank i.e. NHB (ND)/DRS/Policy Circular No.75/2016-17 Dated July November 18, 2013. Also, to compensate the borrowers for fraudulent acts of the respondents and to direct the PNB Housing Finance Limited to reverse the adverse credit information about the housing loan customer to the Credit

Information Companies.

g) any other order or directions as the Hon'ble Court may deem fit and proper in the facts and circumstances of the case be also passed in favor of the Petitioner ;

h) Cost of the Present Petition be also allowed in favor of the Petitioner and against the respondent."

2. We have heard the petitioner who appears in person and counsel for respondents No.1 and 2.

3. The learned Senior Counsel appearing for respondent No.2 submits that this is not a Public Interest Litigation at all. It is further submitted that the circular dated 01.07.2016 by respondent No.2, is not mandatory in nature but advisory. There were circulars issued in the past by respondent No.1, such as Circular No.75/13 dated 18.11.2013 as well as Circular No.15/16 dated 01.07.2016. Under these two circulars for the loans given by respondent No.2 in the year 2014-15, actions have been initiated in the year 2019 against respondent No.2, against which an appeal has been preferred before the appropriate forum.

4. Thus, the circular which is referred to in the memo of the prayer of this writ petition is similar to the aforesaid two circulars of the year 2013 and 2016, which as per respondent No.2, are advisory in nature and not mandatory and moreover, the matter is *sub-judice*.

5. It is further submitted by the learned Senior Counsel for respondent No.2 that there are similarly situated companies like respondent No.2; approximately 100, in this country. The petitioner is targeting only one of such companies for reasons best known to him and hence this is absolutely a private interest litigation or a litigation with an intention to blackmail.

6. It is further submitted that even otherwise, respondent No.1 has also recently issued a circular dated 19.07.2019, (which is at 'Annexure R-2/6' annexed with the counter affidavit filed by respondent No.2). As per this circular now, the previous practices adopted by financial institutions/companies have been brought to an end, so far as such practices relating to grant of loans, where instead of stage-wise financial assistance, lumpsum grants were being given by financial institutions. Thus, it is submitted that after 19.07.2019, the practice of grant of loans for housing purposes is now governed by this latest circular and stage-wise financial assistance is to be given and not lumpsum amount.

7. The counsel appearing for respondent No.1 submitted that they have already issued a circular dated 19.07.2019 directing housing finance institutions to desist from a practice which is adopted by financial institutions whereby they were giving lumpsum financial assistance to the concerned applicants, instead of giving stage-wise loans/financial assistance. Stage-wise is to be looked into and thereafter, the loan is to be given.

8. Looking to the latest circular issued by the respondent No.2 dated 19.07.2019, it appears that such kinds of housing finance companies shall have to desist from the practice of grant of lumpsum financial assistance to applicants. Now, these housing finance institutions shall give financial assistance/loans in a stage-wise construction.

9. Moreover, it has been submitted by the counsel for respondent No.1 that if any notice has been given by respondent No.1 to respondent No.2 and to other similar kinds of institutions, the same will be decided in accordance with the law, rules, regulations and Government policy applicable to the facts of the present case after giving an adequate opportunity of being heard

to the noticee.

10. As the latest circular has already been issued by respondent No.1, we are not going into much detail. PNB Housing Finance Ltd. has already challenged the nature of the earlier circular bearing No.75/13 dated 18.11.2013 as well as circular bearing No.15/16 dated 01.07.2016, which as per PNB Housing Finance Ltd. is advisory in nature and which is challenged in an appeal before the appropriate forum.

11. Hence, instead of criticizing the petitioner that this is not a Public Interest Litigation and alleging that the petitioner has targeted only one of such companies like PNB Housing Finance Ltd., suffice would it be to say that for the disposal of this writ petition that respondent No.1/National Housing Bank Ltd. shall take complete care of the execution of their own circular dated 19.07.2019, as well as of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act, 2002'). If any institution is violating the said circular, action will be taken by National Housing Bank Ltd. in accordance with the law, rules, regulations and Government policy applicable to the facts of the present case after giving an adequate opportunity of being heard to the concerned parties.

12. With these observations, the writ petition is hereby disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J

AUGUST 09, 2019/kks