IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 18..11..2019

Orders Pronounced on: 13..01..2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.25190 of 2007
and
M.P.No.1 of 2007

M/s.Marg Digital Infrastructures Pvt. Ltd.,
501, Apex Chambers 5th Floor,
20, Sir Thyagaraya Road,
T.Nagar, Chennai 600 017,
Rep. by its Director,
Mr.G.R.K.Reddy ... Petitioner

-Versus-

1.The Regional Director,
Reserve Bank of India,
Fort Glacis, Rajaji Salai,
Chennai 600 0001.

2.The General Manager,
Department of Banking Supervision,
Reserve Bank of India,
Fort Glacis, Rajaji Salai,
Chennai 600 001.

3.The Director,
Board of Financial Supervision,
Reserve Bank of India,
Reserve Bank of India Building,
Bandra Kurla Complex,
Mumbai-400 051.
4.Banking Codes and Standards Board of India,
Reserve Bank of India,
Reserve Bank of India Building,
Bandra Kurla Complex,
Mumbai 400 051.

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5.The General Manager,
Union Bank of India,
Industrial Finance Branch-Chennai,
Riaz Garden,
No.12, Kodambakkam High Road,
Nungambakkam, Chennai 600 034. ... Respondents

Petition filed under Article 227 of the Constitution of India, praying to issue a writ of certiorarified mandamus, calling for the records relating to the impugned communication of the 5th respondent dated 20.12.2006 under Ref.No.IFB/06-07/2929 and all consequential proceedings and to quash the impugned proceedings and the consequential proceedings of the 5th respondent and to consequently, direct the respondents 1 to 4 to take action on the representation of the petitioner dated 16.7.2007 submitted to them against the levy of prepayment penalty renewal fee and excess demands in violation of the Banking policy and Fair Banking Practices Code by the 5th respondent and direct the 5th respondent to permit the petitioner to withdraw the sum of Rs.1,85,17,892/- (Rupees One Crore Eighty Five Lakhs Seventeen Thousand Eight Hundred and Ninety Two only) deposited by the petitioner under protest together with accrued benefits within the time frame to be stipulated by this court.

For Petitioner	: Mr.N.Muralikumaran for M/s.MCGAN Law Fir
For Respondent(s)	: Mr.T.Poornam for RR1 to 4 Mr.Varun Srinivasan for M/s.N.V.S. Associates for R5

ORDER

This writ petition has been filed challenging the order passed by the 5th respondent bank directing the petitioner to pay the prepayment penalty for preclosure of the term loan and for a consequential direction to the Reserve Bank of India to consider the complaint made by the petitioner against the 5th respondent bank.

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2. The brief facts leading to the filing of this writ petition are as follows:- The petitioner is a company carrying on the commercial activities of developing software technology parks, townships, commercial complexes and various other projects. In the year 2004, the petitioner approached, the 5th respondent for financial assistance and the 5th respondent had

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sanctioned a term loan of Rs.18 crores for the purpose of setting up a software technology park at the IT highway, Karapakkam, in Old Mahabalipuram Road, Chennai. Originally, the petitioner had proposed to let out the IT Park Complex to TATA Consultancy Services Limited. Though the loan was sanctioned as a construction loan, it was proposed to convert the same, after the completion of construction and on signing tripartite agreement with Tata Consultancy Services Limited, into "Union Rent Advance" which is a separate scheme floated by the 5th respondent bank. However, that proposal did not materialize and the petitioner could not let out the premises to Tata Consultancy Services Limited. Hence, the conversion of Term Loan into Union Rent Advance Scheme could not materialize.

3. In the mean time, the 5th respondent had increased the rate of interest from 12.75% p.a. to 16% p.a. Since rate of interest levied by the 5th respondent is exorbitant, the petitioner had decided to foreclose the loan, therefore, on 11.12.2006, petitioner addressed a letter to the 5th respondent seeking to confirm the loan outstanding for foreclosure of loan followed by a reminder on 16.12.2006. According to the petitioner, that proposal was not approved by the 5th respondent bank immediately. Thereafter, the 5th respondent by letter dated 20.12.2016, which is impugned in the writ petition, demanded the outstanding amount of Rs.17,60,20,610/- apart from prepayment penalty of Rs.1,27,32,142/-. The petitioner had opposed the levy of prepayment penalty on the ground that it was against the directions issued by the Reserve Bank of India (RBI) and there is no specific agreement between the parties for payment of penalty for the preclosure of the loan. Even according to the sanction letter issued by the 5th respondent, there was no such clause for levy of prepayment penalty. Even though the sanction letter contained a standard clause in respect of prepayment penalty viz., "prepayment penalty applicable as per extent guidelines" the same was not incorporated in the subsequent term loan agreement dated 17.02.2005.

4. In the above circumstances, the petitioner complained to the RBI authorities, who have been arrayed as the respondents 1 to 4 herein, seeking their indulgence on the issue and suitable action in the matter against the 5th respondent bank. In the mean time, the petitioner paid the entire outstanding including prepayment penalty of Rs.1,85,17,892/- as demanded by the 5th respondent bank, however, with protest and with a request to keep the amount in a fixed deposit account until the issue is decided by the RBI. Since the request of the petitioner was not considered by the respondents 1 to 4, the petitioner has no other option except to approach this court by way of the instant

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writ petition.

5. The respondents 1 to 3 filed their counter affidavit inter alia contending that there are disputed questions involved in the writ petition and the petitioner cannot seek to resolve the dispute in respect of settlement of loan outstanding by invoking Article 226 of the Constitution of India. It is a contractual obligation between the bank and the petitioner, the petitioner is bound by the contractual terms and conditions. The only remedy available to the petitioner is to institute an appropriate suit for recovery of money against the bank. That apart, the dispute is purely arising out of the contract between petitioner and the bank in the grant of term loan, if at all any violation of any terms and conditions of the contract, the remedy available to the petitioner is only to approach the civil forum for appropriate relief and he cannot invoke the writ jurisdiction of this court.

6. It is further contended by the respondents 1 to 3 that, Fair Practices Code, issued by the RBI were not framed under Sections 21 and 35A of the Banking Regulation Act, 1949, and therefore, they are not statutory in nature and are only guidelines issued for smooth and efficient functioning of banking system in the country, therefore, the petitioner cannot seek to take action as per Fair Practices Code.

7. The Code of Banks Commitment to Customers is a Code adopted by banks, which are members of the Banking Codes and Standards Board of India. It is a voluntary Code setting minimum standards of banking practices to be followed by the banks when they deal with their individual customers. As per the definition, the customer is a person who has an account (including a joint account with another person or an account held as an Executor, Trustee or as a Karta of an HUF, but, not including the accounts of sole Traders / Proprietorships, partnerships, companies, clubs and societies) or who avails of other products/services from a bank". The petitioner, which is admittedly a company, does not fall within the purview of the Code and is not applicable to the case of the petitioner.

8. It is further stated in the counter affidavit that, the banks have been given freedom to fix the rate of services charges for various types of services being provided by them with the approval of the respective Boards. However, banks have been advised that while fixing service charges they should ensure that the charges are reasonable and not out of line with the average cost of providing those services. Pursuant to the representation of the petitioner dated 16.07.2007, comments were

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called for from the 5th respondent bank and such comments were received on 29.09.2007, wherein the 5th respondent bank disputed the various allegations made by the petitioner and further stated that they have not violated any of the policies or directions of the RBI. The hike in the rate of interest and charge of prepayment penalty were as per the terms and conditions of the contract between the bank and the petitioner. In the above circumstances, in the absence of any violation of regulations and the directions issued by the RBI, the petitioner cannot expect the indulgence of the RBI in a matter governed by a contract. The petitioner had failed to establish violation of any specific provisions of the law by the banker and therefore, the RBI cannot interfere with the dispute.

9. The 5th respondent bank filed a detailed counter affidavit inter alia contending that, on the application from the petitioner for a term loan, the bank had sanctioned a term loan of Rs.18 Crores to the petitioner company for the purpose of setting up a Technology Park on 27.01.2005, subject to the terms and conditions mentioned in the loan sanction letter. As per Clause 27 of the Sanction Letter read with Clause 5(a) of Term Loan Agreement, the bank is entitled to charge interest at the contractual rate. The petitioner could not arrange for the tenancy agreement with Tata Consultancy Services Limited, within the stipulated time and therefore, the Term Loan could not be converted into ""Union Rent Advance" thus, the loan remained as "Term Loan". As per the terms and conditions of the loan document, the petitioner is liable to pay interest at the contractual rate and the interest rate cannot go down beyond what is stipulated in the loan document. According to this respondent, the rates are being charges as per the RBI norms and the bank has not deviated any of the norms fixed by the RBI. When the petitioner made a request for preclosure of loan, he was cautioned by letter dated 20.12.2006, that any prepayment of loan would attract prepayment penalty as per the terms of sanction. Earlier, when the petitioner made a representation dated 11.04.2007 for waiver of prepayment penalty, the higher authorities of the respondent bank declined to accept the request of the petitioner by letter dated 20.07.2007.

10. According to the 5th respondent bank, in the mean time, the petitioner deposited a sum of Rs.15, 62,01,606/- towards discharge of their liability besides a further deposit of Rs.1,85,17,892/- towards prepayment penalty with a request to keep the amount in a fixed deposit for 7 days pending decision of the RBI on the representation given by the petitioner questioning the authority of bank to charge the prepayment penalty. Since the request of the petitioner for waiver of

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prepayment penalty was not possible, the respondent bank proceeded further in the matter within their right to exercise their banker's general lien as well as special lien created by virtue of the letter of the petitioner dated 29.06.2007. The sanction letter would clearly stipulate the prepayment penalty. The subsequent term loan agreement was only a renewal of terms and conditions of the loan originally contracted and therefore, the same was not a fresh agreement and the terms and condition attached to the sanction letter alone would govern the term loan granted to the petitioner. The writ petition is devoid of merits and the same is liable only to be dismissed.

11. I have heard the learned counsel for the petitioner, the learned counsel for the respondents 1 to 4 and the learned counsel for the 5th respondent and also perused the records carefully.

12. The petitioner challenges the demand of prepayment penalty for preclosure of the term loan obtained by the petitioner company as it is in violation of the banking policy and Fair Banking Practices Code, issued by the RBI. Therefore, according to the petitioner, the demand of prepayment penalty, excess rate of interest, renewal fees are illegal and there is no specific agreement between the petitioner and the 5th respondent bank for payment of prepayment penalty and other charges. When the petitioner send a complaint to the RBI seeking to take appropriate measures to correct the violations done by the 5th respondent bank, no action was taken by the RBI. Hence, this writ petition.

13. The RBI who have been arrayed the respondents 1 to 4, stoutly opposed the writ petition on the ground that, the issue involves disputed questions of fact and the refund of money paid by the petitioner towards settlement of loan outstanding was purely arising out of contract between the parties and for any violation of terms and conditions of a contract, the petitioner cannot maintain a writ petition, and only remedy available to the petitioner is to approach the appropriate civil forum for recovery of money. It is also contended by the RBI that, Fair Banking Practices Code issued by the RBI is not statutory in nature and it is only a guidelines issued for the smooth and efficient functioning of banking system. That apart, the petitioner being company, cannot fall under the purview of the Banking Codes and Standards of Board of India and such Banking Codes would applicable only to the individual customers.

14. Further, according to the RBI, the banks are at liberty to fix the rate of interest and it is for the respective Board

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of the Bank to fix the charges. The petitioner failed to establish any violation of specific provisions of law or practices issued by the RBI. In the absence of any violation of regulations or directions issued by the RBI, it cannot interfere with the dispute.

15. The 5th respondent bank submitted that it is purely a contract between the petitioner and the bank and as per the terms and conditions of the contract, the petitioner is liable to pay penal charges for preclosure of loan and the petitioner is bound to abide by the terms and conditions of the contract. Relying upon the Clause 27 of the Loan Sanction Letter dated 27.01.2005, which stipulates that prepayment penalty applicable as per extent guidelines and the 5th respondent would contend that as per the guidelines issued by the bank, the petitioner is liable to pay prepayment penalty at 2%.

16. Now, the question which has to be decided in this writ petition is as to whether the petitioner can maintain the instant writ petition to resolve a dispute arising out of the contract.

17. A perusal of the loan sanction letter it could be seen that there is a specific clause which provides for imposition of prepayment penalty as per the guidelines issued by the bank. The petitioner had accepted the terms and conditions attached to the sanction letter and availed the term loan. Now, the petitioner raises a dispute in respect of prepayment penalty clause on the ground that it is against the guidelines issued by the RBI. The RBI, however, disputes the contention of the petitioner stating that there is no violation of any guidelines issued by them and the determination of the rate of interest to be charged is within the preview of the respective bank and it was purely a contract between the petitioner and the 5th respondent bank in which the RBI could not interfere with. It was also clearly stated that the petitioner was not able to establish violation of any guidelines issued by the RBI. apart from that, the petitioner being company fall outside the purview of the customer as per the Code.

18. The learned counsel for the petitioner would contend that there was no specific terms and conditions in the original agreement in respect of grant of term loan as well as in the subsequent renewal agreement. A careful perusal of the terms and conditions attached to the loan sanction letter would go to show that there is a specific clause provides for prepayment penalty.

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19. Coming to the rate of interest, whether the rate of interest charge by the 5th respondent bank is exorbitant or not is not a matter to be decided by this court in a writ petition. At any rate, if the petitioner has got any grievance over the delay in processing his request for preclosure of loan outstanding, which ultimately resulted in payment of higher amount of penalty, the remedy for the petitioner lies elsewhere as the issue involves a disputed question of fact which can be decided only on evidence. Therefore, the petitioner cannot seek to resolve all such disputes by invoking the writ jurisdiction of this court. That apart, the prayer for issuance of a direction to the RBI to consider the complaint made by the petitioner alleging violations of the Code also cannot be considered as the RBI has clearly stated that the petitioner being company would not fall under the purview of the customer, as defined under the Code and the petitioner was also unable to establish that there was violation of any guidelines issued by the RBI.

20. For the foregoing discussions, the relief sought for by the petitioner cannot be granted in the writ petition. If at all the petitioner has got any grievance over the rate of interest and the delay in processing the request of the petitioner for preclosure of loan, it is for him to workout his remedy before the appropriate forum in accordance with law. Thus, this court does not find any merit in this writ petition and therefore, the writ petition is liable only to be dismissed.

In the result, this writ petition is dismissed. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Regional Director,
Reserve Bank of India,
Fort Glacis, Rajaji Salai,
Chennai 600 0001.

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+1CC To M/s.MCGAN Law Firm, Advocate SR.3098
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