

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2020

C O R A M

THE HON'BLE MR.A.P.SAHI, THE CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

WRIT APPEAL NO.363 OF 2020

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C.M.P.NO.6045 OF 2020

M/s.CEE DEE Yes IT Parks Ltd.,
Rep. By its Managing Director,
No.3A/1, Velachery-Taramani Road,
TANSI Nagar, Velachery,
Chennai-600 042.

.... Appellant/Petitioner

Vs

1. The Reserve Bank of India,
Department of Banking Supervision,
Represented by its Chief General manager-in-charge,
Centre I, World Trade Centre,
Mumbai-400 005.
2. The Reserve Bank of India
Regional Office, Chennai,
Fort. Glacis, No.16, Rajaji Salai,
Chennai-600 001.
3. The Assistant Director,
CEPC. The Reserve Bank of India,
Fort Glacis, No.16, Rajaji Salai,
Chennai-600 001.
4. IndusInd Bank,
Zonal Office,
Old No.115,116 New No.34,
G.N.Chetty Road,
T.Nagar, Chennai-600 017.

... Respondents/Respondents

PRAYER :

Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order passed in W.P.No.25226 of 2019 dated 28.02.2020 and allow the writ petition.

W.P.No.25226 of 2019:-

Writ Petition filed under article 226 of the Constitution of India, praying for the issue of a writ of certiorarified mandamus calling for the records relating to the email order dated 17.07.2019 on the file of the third respondent herein and consequently directing the second respondent herein to enquire into the petitioners complaints dated 17.05.2019 and 20.05.2019 and to take necessary action against the 4th respondent herein.

For Appellant : Mr.R.Thiagarajan,
Senior counsel for
Mr.R.Amardeep

For Respondents : Mr.C.Mohan for M/s.King & Partridge
for R1 to R3
Mr.Om Prakash, senior counsel for
Mr.Ilaiyaraja Kumar for
M/s.Ramalingam and Associates for R4

JUDGMENT

SENTHILKUMAR RAMAMOORTHY J.,

The Appellant herein had complained to the Consumer Education and Protection Cell (CEPC), RBI, in respect of the belated release of the title deeds to the Appellant's property by the IndusInd Bank/fourth Respondent herein (the Bank) as also in respect of the alleged wrong classification of the group accounts of the Appellant as non-performing assets (NPA). The complaint was responded to on 17.07.2019 by the Assistant Manager, CEPC, stating that the Bank had informed the RBI that the title deeds were released to the Appellant on 08.07.2019 and that the classification of the group accounts as NPA was in accordance with RBI guidelines. Being dissatisfied with the aforesaid communication, the Appellant filed W.P. No.25226 of 2019. By order dated 28.02.2020, the writ petition was dismissed on the ground that proceedings under the Securitisation and Asset Reconstruction and Enforcement of Security Interest Act, 2002 (the SARFAESI Act) were pending before the DRT as also because the Appellant had filed C.S. No.424 of 2019 on the Original Side of this Court claiming damages of Rs.16,69,96,972/- for wrongful retention of the title deeds of the Appellant. The said order is impugned herein.

2. The Appellant was sanctioned credit facilities under letter dated 02.11.2010 by the the Bank. The said facility was a

Lease Rental Discounting (LRD) facility. In connection therewith, the Appellant created an equitable mortgage in favour of the bank and executed a Memorandum of Deposit of Title Deeds (MODT) on 21.03.2012. Later, the Appellant decided to transfer the LRD loan to LIC Housing Finance Limited. Pursuant to discussions with regard to the amount outstanding as regards the said loan account, the Bank, by letter dated 14.03.2018 to LIC Housing Finance Limited, stated that the outstanding, including pre-closure charges, is a sum of Rs.35.78 crore. Immediately thereafter, the Appellant, by letters dated 16.03.2018 and 19.03.2018, complained to the RBI that the Bank had demanded a sum of Rs.3.52 crore as pre-closure charges. Thereafter, by letter dated 22.03.2018 from the Bank to LIC Housing Finance Limited, the Bank confirmed that the amount outstanding as regards the accounts of the Appellant is a sum of Rs.32.42 crore. This amount was paid by the LIC Housing Finance Limited on 26.03.2018. Pursuant thereto, a receipt dated 28.03.2018 was issued by the Bank acknowledging the receipt of a total sum of Rs.54.20 crores and further acknowledging that there are no outstanding dues or arrears in respect of the MODT dated 21.03.2012, which was registered as Document No.2834 of 2012 in the office of the Sub Registrar, Thiruporur.

3. The Appellant continued complaining to the RBI with regard to the discrepancies in the outstanding amounts demanded by the Bank. By letter dated 09.04.2018 addressed to the Bank, the Appellant informed the Bank that the LRD loan of Rs.54.20 crore had been repaid in full on 27.03.2018 and the MODT was cancelled on 28.03.2018. However, the document relating to the rear block, namely, sale deed dated 25.05.2004 and bearing Document No.1989/2004 had not been released. By the same letter, the Appellant accepted that the sale deed dated 03.03.2004, bearing Document No.628/2004 and sale deed dated 03.03.2004, bearing Document No.629/2004 had been released and received. Meanwhile, in response to the complaint dated 16.03.2018, the RBI informed the Appellant that the Bank had issued a revised letter to the LIC Housing Finance Ltd. to the effect that the amount outstanding as on 22.03.2018 is a sum of Rs.32.42 crore. In addition, the Appellant was informed that the title deeds had already been handed over to the LIC Housing Finance Ltd. On 27.03.2018.

4. Another complaint dated 17.05.2019 was submitted by the Appellant to the RBI complaining that the Bank had quoted three different outstanding amounts in respect of the LRD loan account and that in spite of discharging the mortgage and registering the receipt acknowledging that there are no dues, one title deed of a property valued at Rs.95 crore had been withheld. By the

said letter, the Appellant also complained that the loan accounts of Mr.C.Devadasa Sundaram and Mrs.Cynthia K.Theelepan were also classified as NPA although there was no default in repayment by the said borrowers. The Appellant then proceeded to file W.P. No.17916 of 2019 wherein the Appellant prayed for a Writ of Mandamus to direct the RBI to enquire into the complaint dated 17.05.2019 and 20.05.2019 and to issue an appropriate direction to the Bank to release all the original documents. Meanwhile, the complaint of the Appellant was closed by the RBI on 17.07.2019. Therefore, the Court recorded that the complaint dated 17.05.2019 and 20.05.2019 had been closed by the RBI by order dated 17.07.2019. On that basis, the writ petition was dismissed as withdrawn with liberty to challenge the order dated 17.07.2019. W.P. No.25226 of 2019 was filed in these facts and circumstances challenging the order dated 17.07.2019. As stated earlier, the said writ petition was dismissed by order dated 28.02.2020, which is impugned herein.

5. We heard Mr.Thiagarajan, the learned senior counsel, assisted by Mr.R.Amardeep, for the Appellant; Mr.C.Mohan, M/s.King & Partridge, the learned counsel for respondents 1 to 3; and Mr.Om Prakash, the learned senior counsel, assisted by Mr.Ilaiyaraja Kumar, for the fourth respondent.

6. Mr.Thiagarajan pointed out that the LRD account was pre-closed by making a payment of Rs.32.42 crores. Pursuant thereto, the Bank issued a receipt for a sum of Rs.54.20 crore and confirmed that there are no outstanding dues or arrears in respect of the MODT, which was registered as Document No.2834/2012 in the office of the Sub Registrar Office at Thiropoorur. Once the Bank admitted and acknowledged the receipt of the entire amount outstanding as regards the LRD loan account, the Bank was duty bound to return all the title deeds that had been handed over in connection with the mortgage. However, the Bank admittedly handed over two documents pertaining to the front block of the property but withheld the sale deed dated 25.05.2004 bearing Document No.1989/2004, which pertains to the rear block. Both in respect of the discrepancies in the amount outstanding and in respect of the non-release of title deeds, the Appellant complained to the RBI. In particular, he referred to the complaint dated 17.05.2019 wherein the Appellant had pointed out that a title deed of a property valued at about Rs.95 crores had been withheld and that the Appellant incurred loss of rental income at Rs.61 lakhs per month and was also unable to raise loans on the security of the said property for its business. He also pointed out that the Appellant was constrained to file W.P. No.17916 of 2019 on account of the inaction of the RBI. While the said writ petition was pending,

the Bank, by letter dated 08.07.2019, released the original title deeds. In order to substantiate this contention, he referred to the said letter from the Bank as well as the reply thereto from the Appellant on even date whereby the Appellant had pointed out that the document had been withheld illegally for 466 days. He then referred to the reply dated 17.07.2019 from the Assistant Manager, CEPC, RBI, stating that the classification of the group accounts of the Appellant as NPA in the financial year 2017-18 was in accordance with the RBI guidelines and that the title documents had been released to the Appellant on 08.07.2019. The learned senior counsel contended that the complaint should not have been closed in this manner without questioning the Bank and taking action against it for unlawfully withholding the title deeds for 466 days.

7. He further contended that the filing of a civil suit for recovery of damages from the Bank is an independent cause of action and does not preclude the Appellant from seeking relief by way of a writ petition against the RBI for failing to take action against an errant bank.

8. In reply, the learned counsel for the RBI pointed out that the CEPC of the RBI performs a limited non-adjudicatory role. Therefore, the Appellant was at liberty to seek other remedies. He further submitted that the accounts of the Appellant had been declared as a NPA on 04.05.2018, and, pursuant thereto, a notice under Section 13(2) of the SARFAESI Act was issued in November 2018. Once the loan account was declared as a NPA and proceedings under the SARFAESI Act were initiated, he pointed out that the jurisdiction vested with the appropriate Debts Recovery Tribunal (DRT).

9. Mr.Om Prakash, the learned senior counsel for the Bank submitted that the Appellant had availed a LRD facility and that one of the conditions of the loan agreement was that an event of default would be deemed to occur if the lessee vacates the leased premises. The reason for such a clause is that the EMI for the loan was being serviced from the rental income. The lessee of the IT Park vacated in the year 2016 and it was in those circumstances that the loan account became a NPA. With regard to the retention of title deeds, he submitted that it was admittedly a group account and there was default in other accounts pertaining to the health care company. In any event, the remaining title deeds were admittedly handed over to the Appellant on 08.07.2019 and the civil suit for damages, in respect of the retention of title deeds, is pending adjudication.

10. We considered the submissions of the learned senior counsel/counsel for the respective parties and examined the materials on record.

11. The first question that arises for consideration is whether the Appellant/Petitioner was entitled to maintain a writ petition in respect of the communication dated 17.07.2019 of the RBI, whereby the complaint dated 17.05.2019 was closed. Upon perusal of the said communication, we find that it is a communication from the CEPC, RBI, Chennai, with regard to the complaint dated 17.05.2019 of the Appellant. The said complaint dated 17.05.2019 pertained to the discrepancies in the outstanding amounts, as indicated by the Bank, and the retention of the title deeds of a property valued at Rs.95 crores and the declaration of the accounts of the directors of the company as NPA.

12. As regards the closure of the complaint, the learned counsel for the RBI submitted that the CEPC does not perform an adjudicatory function. The RBI exercises supervisory jurisdiction over banks but as regards customers, their options are to approach the banking ombudsmen or seek redressal from a civil court. In addition, we note that initially two out of three documents were admittedly received by the Appellant, as evidenced by letter dated 09.04.2018, and the third title deed was also received on 08.07.2019 as acknowledged in the communication dated 08.07.2019 from the Appellant. A civil suit is admittedly pending wherein the Appellant has claimed damages of Rs.16,69,93,972/- for the alleged belated release of the title deeds. It is also clear that proceedings are pending before the DRT as regards the measures taken by the Bank under the SARFAESI Act. In these circumstances, the learned single Judge considered the applicable law and by drawing reference to the judgment of the Hon'ble Supreme Court in United Bank of India v. Satyawati Tondon [2010 (8) SCC 110] and Federal Bank Ltd v. Sagar Thomas [2003 (10) SCC 733], the writ petition was dismissed. In Satyawati Tondon, the Hon'ble Supreme Court held that the High Court should not exercise discretion under Article 226 in matters where an alternative remedy is available under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or the SARFAESI Act. In Federal Bank, the Hon'ble Supreme Court held that a writ petition is not maintainable against a private bank with regard to the loan accounts of private parties because such private bank is not performing any statutory functions. These judgments undoubtedly apply to the facts of this case inasmuch as SARFAESI Act proceedings and a civil suit are pending, and the Bank is a private Bank. Therefore, the dismissal of the writ petition cannot be faulted

and we do not find any infirmity in the impugned order in W.P. No.25226 of 2020.

13. In the result, the writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Reserve Bank of India,
Department of Banking Supervision,
Represented by its Chief General manager-in-charge,
Centre I, World Trade Centre,
Mumbai-400 005.
2. The Reserve Bank of India
Regional Office, Chennai,
Fort. Glacis, No.16, Rajaji Salai,
Chennai-600 001.
3. The Assistant Director,
CEPC. The Reserve Bank of India,
Fort Glacis, No.16, Rajaji Salai,
Chennai-600 001.
4. IndusInd Bank,
Zonal Office,
Old No.115,116 New No.34,
G.N.Chetty Road,
T.Nagar, Chennai-600 017.

+2cc to M/s.Ramalingam and Associates , Advocate, S.R.No.32762
+1cc to M/s.King & Partridge, Advocate, S.R.No.32576

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&
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GMR(CO)
CS/24/11/2020