IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2020

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P.No.19378 of 2020
and W.M.P.No.23968 of 2020

L.Moorthy ... Petitioner

Vs

1. The Authorized Officer,
   Axis Bank Limited,
   Retail Lending and Payment Group,
   South Zonal Office, Arcot Plaza,
   165, Arcot Road, Kodampakkam,
   Chennai-600 024.

2. The Branch Operation Head,
   The Axis Bank Limited,
   No.6, St. Ange Street,
   Puducherry-605 001. ... Respondents

* * *

Prayer : Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the respondent to refrain from publishing the photographs of the debtor in any Newspaper or magazine, as threatened in the warning notice circulated to the petitioner through WhatsApp on 02.11.2020.

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For Petitioner : Ms.V.Vadivelou

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Heard the learned counsel for the petitioner.

2. The prayer of the petitioner is to refrain the respondents from publishing the photographs of the debtor in any Newspaper or magazine, as threatened in the warning notice dated 02.11.2020 issued by the respondents through the WhatsApp application.

3. The petitioner, who is the sole proprietor of the proprietorship concern, engaged in the export of agricultural commodities to the Asian and African countries. The petitioner was sanctioned with a Commodity Power Loan to the tune of Rs.80,00,000/- (Rupees Eighty Lakhs only), by pledging the warehouse/storage receipts, vide sanction Reference No.80370641 on 06.12.2017 and the same has to be repaid within a period of twelve months. Though the petitioner had paid the interest, he did not repay the principal and thus, he was issued with the letters on 26.10.2018, 15.11.2018 and 26.11.2018 giving reminders for repayment of the loan, failing which, action would be initiated. The petitioner replied to the final letter on 30.11.2018 seeking time to regularize the loan and also permission to removal of goods partially. But the loan account was classified as Non-Performing Asset (NPA) on 12.12.2018, as per IRAC norms of the Reserve Bank of India (RBI) with a direction to the petitioner to close all the expired receipts on or before 15.12.2018, failing which, the commodity will be brought to public auction.

4. The petitioner filed O.S.No.253 of 2019 on the file of the Additional District Munsif Court, Puducherry, seeking an injunction against the auction. In spite of the same, on 20.05.2019, he was issued with a letter stating that the auction notice was published on 10.05.2019 and calling upon him to repay the outstanding loan amount in three days, which was replied to by him on 23.05.2019. According to the petitioner, the commodity was sold at Rs.54,79,630/- out of which, a sum of Rs.11,04,157/- was deducted as godown rent and the balance sum of Rs.43,75,473/- was adjusted toward the loan account. Thus, a sum Rs.36,62,333/- was stated to be outstanding.

5. The grievance of the petitioner is that the respondents have been taking steps to publish a public notice of his photographs, which is in violation of right to privacy guarantee under Article 21 of the Constitution and also would cause irreparable loss, injury to the petitioner. Hence, he is before this Court.

6. Heard both sides and perused the materials on record.

7. Admittedly, the power of this Court under Article 226 of the Constitution can be invoked against the instrumentalities of the State, which has been defined under Article 12. It is to be stated that Axis Bank, as has been proclaimed by themselves, is the third largest private sector Bank in India. The transaction between the petitioner and the respondents is purely a commercial transaction, for which, common law remedy is available to the petitioner. The petitioner has also filed a

suit before the Additional District Munsif Court, Puducherry, in which, he can redress his grievance.

8. This Court in Jasmine Ebenezer Arthur V. HDFC ERGO General Insurance Company Limited, 2019 SCC OnLine Mad 2246, has considered the scope of judicial review against private bodies, when they are performing public duties while exercising power under Article 226 of the Constitution and held that even if such private body is brought within the purview of Article 12, then it will be subject to constitutional limitations. It will be relevant to note paragraph 10 of the said order, which is reproduced hereinbelow :

> "10. A reading of Article 226 makes it clear that it can be invoked not only for infringement of fundamental rights, but also for any other purpose. Therefore, as stated above, the question that requires determination is whether the private bodies performing public duties can be brought within the purview of judicial review. If a private body is brought within the purview of Article 12, then it will be subject to constitutional limitations. As happened in this case, lack of effective control has made the private bodies acquire more power similar to public authorities. The public monopoly power is replaced by private monopoly power. Hence, it becomes necessary that the private bodies should be made accountable to judiciary within the judicial review. If any private body has a public duty imposed on it, Court has jurisdiction to entertain the writ petition."

9. However, as indicated above, the transaction between the petitioner and the respondents is purely a commercial transaction under the loan arrangement. Hence, Article 226 of the Constitution cannot be invoked against the respondents and this writ petition is liable to be rejected.

10. Accordingly, this writ petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Authorized Officer,
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W.P.No.19378 of 2020

PMK(CO)
RG.19/04/2021