IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No. 27355 of 2015
and
M.P.No.1 of 2015

Thangavelu Fabrics P.Ltd.
Rep. By its Managing Director,
Poolakattur,
Vediarasanpalaym, Agraharam P.O.
Pallipalayam,
Namakkal District -638 008. ...Petitioner

Vs

1. The Chairman,
State Bank of India,
Madamcama Road,
Mumbai - 400 021.

2. The Zonal Manager,
State Bank of India
Zonal Office,
Kurinji Complex,
State Bank Road,
Coimbatore - 641 018.

3. The Branch Manager in the cadre
of AGM, State Bank of India,
SME branch, Pallipalayam,
No.12A Byepass Road,
Pallipalayam,
Namakkal District - 638 008.

4. Banking Ombudsman,
Office of the Banking Ombudsman,
RBI Builidng, Fort Glacir,
No.16 Rajaji Salai, Chennai - 600 001. ..Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the third respondent bank's order vide Ref.No.BR/12 dated 22.11.2013 along with consequential confirmation order of the banking ombudsman dated 19.03.2015 and quash the same by directing the third respondent bank to return Rs.21,59,453/- (Rs.17,60,909 + 62,767 + 1,35,777) along with 18% interest per annum from 30.03.2013 upto the date of payment.

For Petitioner : Mr.S.R.Balasubramaniam

For Respondents: Mr.M.L.Ganesh [For R1 to R3]

Mr.T.Poornam [For R4]

ORDER

The Writ on hand is filed to quash the order passed by the third respondent / State Bank of India in proceeding dated 22.11.2013 along with consequential confirmation order passed by the Banking Ombudsman dated 19.03.2015 and direct the third respondent / State Bank of India to return a sum of Rs.21,59,453/- along with 18% interest per annum from 30.03.2013 up to the date of payment.

2. The petitioner is a Company originally started as a proprietary concern and was operating Bank Accounts with the third respondent / State Bank of India. The petitioner availing various loan facilities periodically on different days. At the outset, the petitioner was operating the account with the third respondent / State Bank of India and availed loan and other facilities.

3. The learned counsel appearing on behalf of the petitioner made a submission that wherever the pre-closure charges are contemplated in the contract, the petitioner was prepared to settle the same. However, in respect of the issue raised in the writ petition, there was no such condition to pay pre -closure charges and therefore, the petitioner is entitled for the relief.

4. The learned counsel for the petitioner has stated that when there is no condition to collect pre-closure charges in respect of the loans availed, the respondent-Bank cannot collect the same unilaterally, which is contrary to the terms and conditions of the contract of loan.

5. Per Contra, the learned counsel appearing on behalf of the third respondent / State Bank of India, objected the contentions raised on behalf of the petitioner in entirety by stating that the subsequent agreements are supplemental agreements. The original agreements contains all the terms and conditions, which the petitioner was aware about that. As per the terms and conditions of contract, the Bank is empowered to

collect pre-payment charges. The said conditions was repeatedly accepted by the petitioner through their letter.

6. The learned counsel for the respondent-Bank drew the attention of this Court with reference to the letters submitted by the petitioner company, wherein they made a request to pre-close their current account and term loans as per the terms and conditions. Several such letters are relied on by the respondent-Bank. The petitioner relied on the agreement and supplemental agreements, which contain several terms and conditions.

7. Perusal of the affidavit, counter affidavit as well as the typed set of papers filed by the respective parties to the lis, this Court is of the considered opinion that such contractual disputes cannot be adjudicated in a writ proceedings under Article 226 of the Constitution of India. An elaborate adjudication of documents, evidences, including oral evidences are required for the purpose of crystallizing the rights of the parties. It is not as if, the statements made in a writ affidavit relied on for the purpose of refund of money, the very relief sough for in the present writ petition would indicate that it is a kind of money suit, which is attempted to be converted as writ petition. Such attempts can never be encouraged by the Courts. In the event of allowing such disputes to be adjudicated in a writ proceedings under Article 226, which is a constitutional remedy provided to the citizen, then every such contractual disputes will be brought before the High Court under writ jurisdiction. Thus, High Court cannot encourage such disputes to be adjudicated in a writ proceedings and a trial with reference to the issues are required to be conducted for the purpose of resolving the issues.

8. Yet another aspect is to be considered is that, in the event of relying on some xerox copies of the documents filed in a writ petition, if any orders are passed, there is a likelihood of commission, omission and error in the matter of crystallizing the rights of the parties. The dispute involves undoubtedly scrutinization of original documents, evidences and also oral evidences. Thus, based on the statements made, such disputes cannot be resolved and it would be inappropriate and there is a possibility of error being committed even by the Courts. The parties are bound to establish their rights based on documents and evidences. Thus, a full fledged trial in such circumstances are imminent and the rights are to be crystallized, then alone the parties are entitled to get the reliefs.

9. In the present case, the petitioner contends that in the absence of the condition, he is entitled for refund of money. The respondents states that the document referred is a supplemental agreement and the original agreement contends all

these conditions. It is further contended that the petitioner himself accepted the terms and conditions and sent letters to the Bank.

10. This being the contentions raised, this Court is of the considered opinion that no writ can be issued with reference to the relief sought for to direct the respondents to refund the money with interest. Thus, the petitioner is at liberty to approach the competent Court of Law in the manner prescribed for the purpose of redressal of their remedy.

11. With these observations, the writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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+2CC to Mr.S.R.Balasubramanian, Advocate, Sr.No.55958

W.P.No. 27355 of 2015

GSM(CO)
SB(17/11/2021)