IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.04.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.9917 of 2021

1.M/s.Bhareth Formulations Pvt. Ltd.,
rep. by its Managing Director C.Murale,
No.1, 12th Street, Nehru Colony,
Pazhavanthangal, Chennai - 600 114.

Presently at:
2/40, 2nd Floor,
Ram Nagar 1st Main Road,
Nanganallur, Chennai - 61.

2.C.Murale ...Petitioners

-vs-

1.Bank of India,
rep. By the Chief Manager,
Mylapore Branch,
120/74, Luz Church Road,
Mylapore,
Chennai - 600 004.

2.Bank of India,
rep. By its Authorised Officer,
Plot No.17, Star House,
Errabalu Chetty Street,
Parrys, Chennai - 600 001. ...Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus directing the respondent bank to compensate the petitioner for a sum of Rs.900,00,000/- (Rupees Nine Crore Only), consequentially release all the properties of the petitioner after deducting Rs.6 Crore as per the Respondent Bank's OTS Letter dated 28.08.2020.

For Petitioners	:	Mr.G.Thyagarajan
For Respondents	:	Mr.Sathiyanarayanan Srinivasan for respondent Nos.1 and 2

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

The grievance of the petitioners is that as a result of the illegal measures adopted by the Bank of India as a secured creditor, the petitioners have suffered loss and damage. The prayer in the petition is for directing the bank to compensate the petitioners in the sum of Rs.9 crore.

2. It is submitted on behalf of the bank that the first petitioner company has been wound up and, as such, the second petitioner as the erstwhile promoter or shareholder or director of the first petitioner company has no authority to represent the first petitioner company. Since such position is admitted by the second petitioner, the petition is treated to have been filed only by the second petitioner.

3. The substance of the second petitioner's grievance is that the business of the first petitioner company suffered serious loss during the floods in 2015 and the goods which were hypothecated in favour of the bank ought to have been insured by the bank for the first petitioner to be compensated for its loss. However, the second petitioner claims that when the bank was approached for lodging the insurance claim, the bank revealed that it had not taken out any insurance cover for the hypothecated goods. It is the further contention of the second petitioner that some of the secured assets, including a residential property occupied by the second petitioner's nonagenarian parents, were sold for much less than they were worth and without any previous notice to the second petitioner.

4. The bank denies any illegality or irregularity in dealing with the secured assets and insists that due notice was issued to the second petitioner. The bank says that notices were duly served on the official liquidator after the first petitioner company went into liquidation. The bank also maintains that it could never have been the bank's obligation to insure the stocks or material of the first petitioner company and such insurance cover ought to have been taken by the company itself.

5. Without going into the merits of the controversy, it is

evident that the claim is on account of damages. For the purpose of a claim in damages to succeed, there has first to be made an assessment as to the breach on the part of one party and, upon the breach being established, there is a question of assessment of the quantum of damages that may have been suffered. It is possible that even if breach is established, quantum may not be established. At any rate, to decide whether there is any breach on the part of the bank and as to the quantum of damages that the second petitioner may be entitled to, oral evidence has to be received and involved questions have to be gone into. Ordinarily, matters under Article 226 of the Constitution are decided in a summary manner on affidavit evidence. It may not be convenient in this jurisdiction to undertake the involved adjudication necessary to arrive at any conclusive finding as to the quantum of compensation that the second petitioner may be entitled to.

6. Accordingly, the claim of the second petitioner is relegated to a suit. It is made clear that the second petitioner will have to establish the second petitioner's locus and entitlement to pursue the claim before any adjudication as to the possible breach on the part of the bank or the assessment of quantum of damages may be gone into. It will also be for the civil Court in receipt of the action to look into the limitation aspect.

7. W.P.No.9917 of 2021 is disposed of without going into the merits of the claim. There will be no order as to costs. W.M.P.Nos.10529, 10530 and 10531 of 2021 are closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Manager,
Bank of India,
Mylapore Branch,
120/74, Luz Church Road,
Mylapore,
Chennai - 600 004.

2.The Authorised Officer,
Bank of India,
Plot No.17, Star House,
Errabalu Chetty Street,
Parrys,
Chennai - 600 001

+2cc to M/s.G.Thiyagarajan Advocate, S.R.No24850

W.P.No.9917 of 2021

PL(CO)
RN(29/03/2021)