IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2021

CORAM

THE HONOURABLE MR.JUSTICE R. MAHADEVAN

WRIT PETITION NO.21818 OF 2021

A.Ashok Kumar ...Petitioner

Versus

1.Union of India
rep. by General Manager
Reserve Bank of India
Fort Glacis, Kamarajar Salai
Chennai - 600 001

2.The Banking Ombudsman
C/o. Reserve Bank of India
(Banking Office)
Fort Glacis, Kamarajar Salai
Chennai - 600 001

3.The Nodal Officer
HDFC Bank Limited
Prime Kushal Towers
First Floor, "A" Wing
96, Anna Salai
Chennai - 600 002

4.The Manager
HDFC Bank Limited
No.759, ITC Centre
Anna Salai
Chennai - 600 002 ...Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the second and third respondents to take action against the fourth respondent to follow the due process of law, regarding collection of loan amount, as guided by Reserve Bank of India forthwith by considering petitioner's complaint dated 04.09.2021.

For Petitioner : Mr.M.Govindarajan

ORDER

The prayer sought in this writ petition is to issue a Writ of Mandamus directing the second and third respondents to take action against the fourth respondent to follow the due process of law, regarding collection of loan amount, as guided by Reserve Bank of India forthwith based on his complaint dated 04.09.2021.

2. The petitioner has availed credit card facility from the fourth respondent bank bearing Credit Card No.5241 8104 0336 6420 with a credit limit of Rs.1,37,000/- during June 2019. According to the petitioner, he used the credit card facility and also repaid the loan amount periodically to the fourth respondent bank. However, owing to pandemic situation, he could not pay the loan amount. Notwithstanding the adverse financial situation faced by the petitioner, the recovery personnel attached to the fourth respondent bank frequently called upon him over phone as well as in person and demanded the repayment of the entire balance amount by slapping exorbitant interest to the tune of Rs.1,46,573/-. According to the petitioner, he is not required to pay Rs.1,46,573/- as demanded by the representatives of the fourth respondent bank. In the above circumstances, unable to sustain the frequent threats unleashed by the recovery agents appointed by the fourth respondent to collect the entire loan amount, the petitioner has given a complaint dated 04.09.2021 to the second respondent seeking to take appropriate action against the fourth respondent bank for the unfair and unreasonable practice adopted in the matter of recovering the loan amount through threat and coercion. According to the petitioner, the complaint given by him on 04.09.2021 has not been considered so far and therefore, he has filed this writ petition.

3. The learned counsel for the petitioner submit that the Honourable Supreme Court, time and again, held that private banks should not resort to collect the borrowed amount by adopting third degree methods and such a practice has been deprecated. To substantiate such contention, he placed reliance on the order dated 26.02.2007 passed by the Honourable Supreme Court in Appeal (Crl) No. 267 of 2007 in the case of (Manager, ICICI Bank Limited vs. Prakash Kaur and others) wherein it was held that Banks have to be held vicariously liable for such acts of the agents engaged by them and that the recovery of loan or vehicles has to be done only through legal means and Banks cannot employ goondas to take possession by force. In the present case, according to the counsel for the petitioner, the fourth respondent bank engaged goondas and hooligans to collect the loan amount from the petitioner without following the due process of law and therefore, the petitioner was constrained to give a complaint to the second respondent on 04.09.2021. However, no action has been taken on the complaint given by the petitioner, hence, the learned counsel for the petitioner prayed this Court to issue appropriate direction to the fourth

respondent bank to recover the loan amount only by adopting due process of law.

4. Heard the learned counsel appearing for the petitioner and perused the material records placed. The grievance of the petitioner is that the fourth respondent bank has resorted to collect the loan amount payable by him without following due process of law and the complaint submitted by him to the second respondent on 04.09.2021 has not been acted upon.

5. At the outset, the correctness or otherwise of the grievance expressed by the petitioner that the lending bank/financial institutions have engaged musclemen or goons to collect the loan amount cannot be examined by this Court in this writ petition. In fact, the petitioner has given a complaint dated 04.09.2021 to the second respondent narrating his grievance against the services rendered by the fourth respondent bank. The second respondent has been exclusively constituted under The Banking Ombudsman Scheme, 2006 with the object of resolving complaints relating to certain services rendered by banks and to facilitate the satisfaction or settlement of such complaints. As per Chapter III, Clause 7 (2) of The Banking Ombudsman Scheme 2006, the Banking Ombudsman shall receive and consider complaints relating to the deficiencies in banking or other services. Clause 10 empowers the Banking Ombudsman to call for the records from the bank against whom the complaint is made. When such power is conferred on the Banking Ombudsman and the petitioner also already subjected himself to the jurisdiction of the Banking Ombudsman with a complaint dated 04.09.2021, this Court is of the view that such complaint preferred by the petitioner before the Banking Ombudsman shall be directed to be disposed of in accordance with law.

6. In the light of the above facts, this Court hereby directs the second respondent herein/Banking Ombudsman to consider the complaint said to have been given by the petitioner on 04.09.2021 and pass orders thereof on merits and in accordance with law, after affording an opportunity of hearing to the petitioner (complainant) as well as the representative of the fourth respondent bank, within a period of eight weeks form the date of receipt of a copy of this order.

7. Accordingly, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

rsh

To

1.Union of India
rep. by General Manager
Reserve Bank of India
Fort Glacis, Kamarajar Salai
Chennai - 600 001.

2.The Banking Ombudsman
C/o. Reserve Bank of India
(Banking Office)
Fort Glacis, Kamarajar Salai
Chennai - 600 001.

W.P.No.21818 of 2021

JP-II(CO)
RVM(26/11/2021)