THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2021

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P. No. 22106 of 2021

P. Santhanaraj .. Petitioner

Versus

1. Union of India
   Rep., by General Manager
   Reserve Bank of India
   Fort Glacis, Kamarajar Salai
   Chennai - 600001.

2. The Banking Ombudsman
   C/o.Reserve Bank of India
   (Banking Office)
   Fort Glacis, Kamarajar Salai
   Chennai 600001.

3. The Principal Nodal Officer
   Axis Bank Private Limited
   Circle Office – II, Floor No.3
   Club House Road
   Chennai – 600 002

4. The Manager
   Axis Bank Limited
   Kodambakkam Branch
   2/19, 5th Cross Street
   United India Colony, Kodambakkam
   Chennai – 600 024 .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the second respondent 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 petitioner complaint dated 02.09.2021.

For Petitioner : Mr. M. Govindarajan
For Respondents : Mr. M. Karthikeyan for R3 & R4

ORDER

The petitioner has filed this writ petition seeking to issue a Writ of Mandamus directing the second respondent 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 the petitioner's complaint dated 02.09.2021.

2. The petitioner availed credit card facility from the fourth respondent bank to the limit of Rs.40,000/- during August 2019. According to the petitioner, he has repaid an amount to the fourth respondent, however, the recovery personnel attached to the fourth respondent bank frequently called upon him and demanded the repayment of the arrears amount to the tune of Rs.69,654/- by slapping exorbitant interest. Unable to sustain the frequent threats unleashed by the recovery agents appointed by the fourth respondent to collect the loan amount, the petitioner has given a complaint to the respondents 2 and 3 on 02.09.2021 seeking to take appropriate action against the third and fourth respondents 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 dated 02.09.2021 has not been considered so far and therefore, he has filed this writ petition.

3. The learned counsel for the petitioner submits 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 balance amount from the petitioner without following the due process of law and therefore, the complaint dated 02.09.2021 has been given by the petitioner. However, the respondents 2 and 3 failed to take any action thereof, hence, the learned counsel for the petitioner prayed this Court to issue appropriate direction to the fourth respondent to recover the loan amount by adopting due process of law.

4. The learned counsel for the third and fourth respondents vehemently contend that the Bank has not adopted any such unlawful method in collecting the loan amount. The petitioner, having availed the credit card to the limit of Rs. 40,000/- has failed to repay the arrears amount. The loan amount was directed to be repaid by the bank in a lawful manner and the question of exerting pressure towards the petitioner through third degree method does not arise. The petitioner has availed a huge amount and committed default in payment of arrears amount. When the petitioner committed default in payment of the arrears amount, the respondents bank lawfully demanded the repayment of the arrears amount. However, the petitioner has raised various allegations as against the fourth respondent bank in the matter of collection of the arrears amount. It is vehemently contended by the counsel for the fourth respondent bank that the present attempt on the part of the petitioner in filing this writ petition is to throttle the legitimate process initiated by the fourth respondent bank and therefore, he prayed for dismissal of the writ petition.

5. Heard the counsel for both sides. The grievance of the petitioner is that the fourth respondent bank has resorted to collect the arrear amount payable by him without following due process of law and his complaint dated 02.09.2021 submitted by him has not been acted upon by the respondents 2 and 3.

6. At the outset, the correctness or otherwise of the grievance expressed by the petitioner that the fourth respondent bank has engaged musclemen or goons to collect the arrears amount cannot be examined by this Court in this writ

petition. This is more so that the learned counsel for the fourth respondent bank denied having engaged goondas or hooligans to collect the arrears amount from the petitioner. In fact, the petitioner himself has given a complaint dated 02.09.2021 to the second respondent. 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 second respondent herein shall receive and consider complaints relating to the deficiencies in banking or other services. Clause 10 empowers the second respondent to call for the records from the bank against whom the complaint is made. When such power is conferred on the second respondent and the petitioner also already subject himself to the jurisdiction of the second respondent, this Court is of the view that such complaint preferred by the petitioner before the second respondent on 02.09.2021 shall be directed to be disposed of in accordance with law.

7. In the light of the above facts, this Court hereby directs the second respondent to consider the complaint dated 02.09.2021 of the petitioner 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 fourth respondent bank, within a period of eight weeks form the date of receipt of a copy of this order.

8. Accordingly, the writ petition is disposed of. No costs.

Sd/-
Assistant Registrar (CS-IV)

// True Copy //

Sub Assistant Registrar

dhk/rsh

To

1.The General Manager
Union of India
Reserve Bank of India
Fort Glacis, Kamarajar Salai
Chennai – 600001.

2. The Banking Ombudsman
C/o.Reserve Bank of India
(Banking Office)
Fort Glacis, Kamarajar Salai
Chennai 600001.

W.P. No. 22106 of 2021

KSM(CO)
B.VC (02/11/2021)