IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2021

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WRIT PETITION NOS. 23252 AND 23301 OF 2021

WP No. 23252 of 2021

S.Jaikumar

.. Petitioner

Versus

1. The Honourable Ombudsman
   C/o.Reserve Bank of India
   Fort Glacis, Rajaji Salai
   Chennai 600001.

2. The Principal Nodal Officer
   RBL Bank Limited
   JMD Megapolls, Unit No. 306-311
   3rd Floor, Sehna Road
   Sector – 48, Gurugram
   Haryana – 122 018

3. The Manager
   RBL Bank Limited
   Credit Card Division
   Ground Floor, Nibav Building
   No.11, LB Road, Adyar
   Chennai – 600 020.

..Respondents

WP No. 23301 of 2021

S.Vijayakumar

.. Petitioner

Versus

1. The Honourable Ombudsman
C/o.Reserve Bank of India
Fort Glacis, Chennai 600001.

2. The Manager
HDFC Bank Limited
No. 759, ITC Centre
Anna Salai, Chennai – 600 002.

..Respondents

WP No. 23252 of 2021:- Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the first respondent to take action against the third 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 07.09.2021.

WP No. 23301 of 2021:- Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the first respondent to take action against the second 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 01.10.2021.

For Petitioner : Mr.M.Govindarajan in both WPs

COMMON ORDER

In both these writ petitions, the prayer made is to issue a Writ of Mandamus directing the first respondent to take action against the banks or financial institutions which have lent money to the respective petitioners, for not following due process of law, regarding collection of loan amount, as guided by Reserve Bank of India forthwith, based on their respective complaints dated 07.09.2021 and 01.10.2021.

2. The petitioners in these writ petitions have availed credit card facility from the respective banks. According to the petitioners, they have repaid the amount periodically, however, owing to pandemic situation, they could not pay the loan amount. Notwithstanding the adverse financial situation faced by the

petitioners, the recovery personnel attached to the lending banks / financial institutions frequently called upon them and demanded the repayment of the entire balance amount by slapping exorbitant interest. Unable to sustain the frequent threats unleashed by the recovery agents appointed by the lending banks/financial institutions to collect the loan amount, the petitioners have given complaints to the Banking Ombudsman seeking to take appropriate action against the lending banks/ financial institutions for the unfair and unreasonable practice adopted in the matter of recovering the loan amount through threat and coercion. Since the complaints given by them have not been considered so far, they have filed these writ petitions.

3. The learned counsel for the petitioners submitted 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 petitioners, the lending banks/ financial institutions engaged goondas and hooligans to collect the loan amount from the petitioners without following the due process of law and therefore, the petitioners have been constrained to give complaints to the Banking Ombudsman. However, no action has been taken on the complaints given by the petitioners. Therefore, the learned counsel prayed this Court to issue appropriate direction to the lending banks/financial institutions to recover the loan amount only by adopting due process of law.

4. Heard the learned counsel for the petitioners and perused the documents enclosed in the typed set of papers. The grievance of the petitioners is that the lending banks/financial institutions have resorted to collect the loan amount payable by them without following due process of law and the complaints submitted by them to the Banking Ombudsman have not been acted upon.

5. At the outset, the correctness or otherwise of the grievance expressed by the petitioners that the lending banks/financial institutions have engaged musclemen or goons to collect the loan amount, cannot be examined by this Court in these writ petitions. In fact, the petitioners have given complaints to the Banking Ombudsman narrating their grievances. The Banking Ombudsman 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 petitioners have already subjected themselves to the jurisdiction of the Banking Ombudsman with complaints, this Court is of the view that such complaints preferred by the petitioners before the Banking Ombudsman shall be directed to be disposed of in accordance with law.

6. In such view of the matter, this Court hereby directs the Banking Ombudsman to consider the complaints said to have been given by the petitioners on 07.09.2021 and 01.10.2021 and pass orders thereof on merits and in accordance with law, after affording an opportunity of hearing to the petitioners as well as the respective lending banks/financial institutions, within a period of eight weeks form the date of receipt of a copy of this order.

7. Accordingly, both the writ petitions are disposed of. No costs.

Sd/-
Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

dhk

To

The Honourable Ombudsman
C/o.Reserve Bank of India
Fort Glacis, Rajaji Salai
Chennai 600 001.

WP Nos. 23252 and
23301 of 2021

PA(CO)
RLP(24/11/2021)