03.08.2022
Ct. 5
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WPA 13315 of 2022

Firdosh Ali Mallick
-Vs-
The IndusInd Bank Ltd. & Ors.

Mr. Nilendu Bhattacharya,
Mr. Shataroop Purokayastha,
Mr. Jagriti Bhattacharya
... for the petitioner

Mr. Subhankar Chakraborty,
Mr. Saptarshi Bhattacharjee,
... for the respondent Bank

The petitioner seeks a mandamus on the respondent IndusInd Bank in respect of a transaction entered into between the petitioner and the Bank in the form of a hire purchase/loan agreement.

The point of maintainability has been raised on behalf of the respondent Bank, which should be answered first.

Upon perusing the writ petition and the prayers made therein, the petitioner admittedly has claimed the relief in terms of the loan and hypothecation entered into between the petitioner and the Bank on 10.03.2022.

The contention of the petitioner that the respondent Bank, which is apparently a private bank, is amenable to writ jurisdiction is not acceptable to the Court by reason of the settled law in the subject.

The decisions of the Supreme Court including in *Federal Bank Ltd. Vs. Sagar Thomas; (2003) 10 SCC 733*, make it clear that a private bank can only be brought within the fold of Article 226 of the Constitution of India if it discharges governmental functions. The Supreme Court opined that there are several businesses involving commercial activities including banking, resulting in circulation of money that may have an impact on the economy of the country but such activities cannot be classified as one falling within the category of discharging duties or functions of a public nature.

The decision shown by learned counsel appearing for the petitioner reported in *AIR 2004 Cal 148 (Amal Kumar Bose Vs. State of West Bengal*) does not discuss the maintainability issue and hence does not assist the petitioner.

In the present case, the dispute is clearly a private dispute. The petitioner entered into a transaction with the Bank for hypothecation of his vehicle, the petitioner could not pay the instalments within the time frame and the vehicle was repossessed by the Bank. There is no flavour of public element in the transaction. There is also no governmental presence in the activities of the private bank. Although Article

226 of the Constitution has received a liberal interpretation in several decisions, a private bank involved in a private transaction cannot be brought within the ambit of Article 226 of the Constitution of India. The petitioner may invoke the legal remedies available to the petitioner. The writ petition is, therefore, held to be not maintainable and is accordingly dismissed without any order as to costs.

(**Moushumi Bhattacharya, J.)**