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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2396 OF 2021

Shree Bal Properties & Finance Pvt Ltd. …Petitioner
Versus
Union of India & Ors …Respondents

WITH

WRIT PETITION NO.2397 OF 2021

Vrinda Sharad Bal …Petitioner
Versus
Union of India & Ors …Respondents

WITH

WRIT PETITION (L) NO.16611 OF 2021

Padmanabh Pioneer Promters LLP …Petitioner
Versus
Union of India & Ors …Respondents

Mr Nikhil Sakhardande, *Senior Advocate with Mr Siddhesh Bhole, Srishti Joshi, Ashish Venugopal, Varad Achwal, Shubdra Swamy i/b SSB Legal & Advisory for the Petitioner in WP Nos 2396/2021, 2397/2021 and WPL 16611/2021.*
Mr Adavith Sethna, *i/b Anusha P Amin for Respondent No 1.*
Mr Rahul Gaikwad, *i/b Gravitas Legal for Respondent No 2.*
Ms Aditi Pathak, *with Kirti Ojha i/b BLAC & Co for Respondent No 3 in WP 2396/2021, for Respondent Nos3 and 4 in 2397/2021 and for Respondent Nos3 and 4 WPL 16611/2021.*

Mr Mayur Khandeparkar, *with Mr T N Tripathi & Ms Kalyani Wagle i/b T N Tripathi for the Petitioner in WP Nos 2396/2021, 2397/2021 and WPL 16611/2021*

CORAM G.S. Patel &
Madhav J. Jamdar, JJ.
DATED: 14th March 2022

PC:-

1. This order will dispose of Writ Petition Nos 2396 of 2021, 2397 of 2021 and Writ Petition (L) No 16611 of 2021.

2. We take the facts from Writ Petition No 2396 of 2021. The reliefs sought in other Petition are broadly similar.

3. The Petitioner, Shree Bal Properties and Finance Pvt Ltd, ("**Bal Properties**") seeks the following reliefs:

> "(A) That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate Writ, order of directions under Article 226 of the Constitution of India directing Respondent No 2 to decide the representation, as expeditiously as possible, contained in letters dated 9 June 2021 submitted by Petitioner;
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> (B) That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate Writ, order or direction under Article 226 of the Constitution of India directing Respondent No 3 to decide the representations, as expeditiously as possible, contained in letter dated 18 June 2021 lodged by Petitioner with Respondent No 3.
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> (C) That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate Writ, order or

direction under Article 226 of the Constitution of India directing Respondent Nos 2 and/or 3 to issue appropriate directions to Respondent Nos 5 to reverse the illegal enhancement of the interest rates for the loans issued in favour of Petitioner, as the enhanced interest rate was arbitrary and illegal, and in violation of the RBI Circular dated 24 May 2007; and Guidelines dated 26 March 2012; and further be pleased to direct Respondent No 4 to return monies to Petitioner collected in excess.

(D) That this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ or order or direction under Article 226 of the Constitution of India directing Respondent Nos 2 and/or 3 to issue appropriate circulars or notifications making clauses void and/or unenforceable against borrowers which are identical/similar to Clause No 4 in the loan sanction letter issued to Petitioner, which reads thus-- *"Repayment of loan amount will be through instalments. EMI's comprising principal and/or interest. Repayment of loan amount can be done through electronic mode (ECS) also. ICCL may in its sole discretion alter the rate of interest suitably and prospectively if unforseen or extraordinary changes in the money market conditions take place."*

4. The facts are not contentious. Bal Properties is in the business of real estate. It wanted a loan. It approached the 4th Respondent, Indiabulls Commercial Credit Ltd ("**Indiabulls**"), a Non Banking Financial Company. We will leave aside all the very many adjectives used in this Petition to describe people and events. It is accepted that Bal Properties took three LLAP loans from Indiabulls on 26th September 2017, 4th October 2017 and 13th July 2018 in the amounts of Rs 13.15 crores, Rs 2.50 crores and Rs 2 crores respectively. These loans were for, respectively, 180 months, 180 months and 60 months. The interest rate at the time of sanction was 11%, 11% and 11.5%. The three loans were secured by a charge on immovable property.

5. Bal Properties' case is that in 2018 Indiabulls unilaterally and, in Bal Properties description, 'arbitrarily', increased the interest rate on all three loans to 15%, 15.20% and 16.30%. Some of the communications by which this was done are annexed to the Affidavit in Reply filed by Indiabulls.

6. Mr Sakhardande, learned Senior Counsel for the Petitioners, asks us to hold that this increase by Indiabulls is illegal and contrary to RBI circulars, notification and guidelines. He says these guidelines have the force of law. He draws our attention to the guidelines on Fair Practice for NBFCs issued by RBI on 26th March 2012. Guideline (ii)(a) at page 136 of the paperbook deals with disbursement of loans including changes in the terms and conditions. The relevant portion reads:

> "(ii) Disbursement of loans including changes in terms and conditions
>
> (a) The NBFCs should give notice to the borrower in the vernacular language as understood by the borrower of any changes in the terms and conditions including disbursement schedule, interest rates, service charges, prepayment charges etc. NBFCs should also ensure that changes in interest rates and charges are effected only prospectively. A suitable condition in this regard should be incorporated in the loan agreement."

7. According to him, Indiabulls did not give advance notice to Bal Properties about the change in interest and did not do so in advance of the effective date. This, he submits, means that Indiabulls retrospectively increased the interest rate. The document at page 306 is dated 18th April 2018 and it proposed an increase in mortgage loan by 0.5% from 5th April 2018, i.e. from about two weeks earlier.

8. Mr Khandeparkar for Indiabulls points to a master circular issued by the Reserve Bank of India as regards complaints of excessive interest charged by NBFCs. The RBI said that it has received several complaints in this regard. It then noted that interest rates are not regulated by RBI. Yet, interest rates beyond certain level "may be seen to be excessive and can neither be sustainable nor be conforming to normal financial practices." This was in the context of an instructions to Non Banking Financial Companies Board to lay out appropriate internal principles and procedures in determining interest rates, processing and other charges.

9. Prima facie, this is not some sort of prohibition by the RBI on NBFCs. We have not understood Mr Khandeparkar to suggest that NBFCs are entirely unregulated. His submission is that interest rates announced by the RBI, though applicable to banks (specifying a lending rate etc) are not applicable to NBFCs. The rest is in the nature of an advisory.

10. A more relevant aspect to these matters is to assess what the Petitioners themselves have done after being notified of the first of these interest rate changes several years ago in 2018. There is, after all, the question of delay and laches to which we cannot turn a blind eye. Equally important is that fact that, admittedly, the Petitioners *paid* these amounts of increased interest at regular intervals. They cannot show that they did so under protest or on a without prejudice basis. Had the Petitioners made payment on a without prejudice and under protest basis and had Indiabulls accepted that payment, Indiabulls would have been held to have accepted the condition of without prejudice and under protest — for whatever that is worth. But there is no such condition. Therefore, the payments made by the Petitioners were an unconditional acceptance of the interest rate.

11. It is also undisputed that, in 2021, Bal Properties took of further finance from Indiabulls. It did so without protest about any past increase in the interest rate.

12. To illustrate this in a time sequence: (1) 2018 — Indiabulls stipulates an increased interest rate and a starting date; (2) 2018 onwards — Bal Properties pays the demand without protest; (3) 2021 — Bal Properties takes further finance from Indiabulls, with no protest about past increased interest rate (4) 2021 — Bal Properties for the first challenges the 2018 interest rate, the starting date of that increased interest rate, and now claims a full refund (and that, too, in a Writ Petition).

13. In this context, we may profitably consider the detailed exposition of the law on estoppel, acquiescence, delay, laches and waiver and the distinctions between these concepts in paragraphs 39 to 42 of the Supreme Court decision in *Chairman, State Bank of India & Anr v MJ James*, albeit arising from service law.[1] All these considerations will apply against Bal Properties. There is certainly a question of estoppel in pais and estoppel by conduct, apart from the issues of delay and laches.

14. What the Petition entirely overlooks is the terms of the contract between Bal Properties and Indiabulls. That financing agreement is a contract, pure and simple. There is no dispute that it provided for a *floating* interest rate. This means that the lender (Indiabulls) is entitled to alter periodically the applicable interest rate. This does not need further, or a second-level agreement or consensus; that entitlement of the lender is already built into the main loan agreement.

15. We find it difficult therefore to accept the proposition that Bal Properties can now seek relief about a historical increase in interest rates and effectively ask us to order a refund, or that it can even make a 'representation' to any authority in that regard. And this also raises another pertinent issue: to whom can that representation possibly be made, given this framework of guidelines and contractual entitlements? It cannot be made to the RBI. It can only be made to Indiabulls. And to Indiabulls we can issue no mandamus. In the context of the contract, correctly read, there is no scope for a 'representation'. It can only be a mercy petition of some kind. That creates no legal duty or obligation on the part of Indiabulls (even

1 (2022) 2 SCC 301.

assuming it is amenable to our writ jurisdiction) or RBI. It certainly creates no legal entitlement or right in favour of Bal Properties.

16. Prayer clauses (a) and (b) set out above appear to be innocuous in that they ask for a direction to the RBI to decide the Petitioner's representation. But what is that representation? We do not see why we should allow these Petitioners in these circumstances to attempt a roll back of that which they have unequivocally accepted in contract, and acted upon.

17. What Bal Properties really seeks, if one cuts through the surrounding clutter, is a rewriting of the terms of the loan agreement; some sort of court-ordered novatio, or, at the very least, leave to Bal Properties to seek, as a matter of a legal or constitutional right, an order from us to make that demand from Indiabulls. This is evident from prayer clause (d). No such order is possible.

18. We have no hesitation in saying that between Bal Properties and Indiabulls there is a contract. Indiabulls itself is not amenable to the jurisdiction of this Court. The instrumentality of the State, RBI has no role to play in the transaction between Bal Properties and Indiabulls. Whether or not there are alternate remedies available is not presently our concern.

19. Lastly, as Mr Khandeparkar points out prayer clause (c) demands a reversal of the so called illegal enhancement. This is in nothing but a decree for a refund.

20. In Writ Petition (L) No 16611 of 2021 the Petitioner is a wholesale fresh fish dealer association. There is no second loan or renewal of the loan. A Banking Ombudsman has been made a party. The finance in question is in the form of three loans, as per the details set out in paragraph 4.1. It is said that there was an increase by Indiabulls, Respondent No 5 in the Padmanabh Properties Petition, similar to the one in Bal Properties. Indeed it seems that Bal Properties and Padmanabh Properties are in some way connected. There may be some commonality of directors. The grounds in both Petitions are same. The reliefs in both Petitions are identical. We do not think it necessary to separately deal with the facts in the Padmanabh Properties Writ Petition.

21. The Petitions are without substance and are rejected.

22. There will be no order as to costs.

(Madhav J. Jamdar, J) **(G. S. Patel, J)**