IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2022

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.9683 of 2010
and
W.M.P.Nos.1 & 2 of 2010

K.Shivakumar ... Petitioner

Vs.

1. Standard Chartered Bank
   Customer Care Unit,
   19, Rajaji Salai,
   Chennai 600 001.

2. Credit Information Bureau (India) Limited,
   Represented by its Directors
   Hoeshst Houst, 6th Floor,
   Backbay Reclamation,
   Nariman Point, Mumbai 400 021.

3. Reserve Bank of India
   Rep by its Regional Director,
   Fort Glacis, Rajaji Salai,
   Chennai 600 001. ... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the order/communication of the 1st respondent to the 2nd respondent relating to the portrayal of the petitioner as a defaulter and the consequent communication of the said declaration by the 2nd respondent to the petitioner dated 28.10.2009 bearing S.No.66090, quashing the same and consequently direct the 2nd respondent to remove the petitioner's name from the list of defaulters as maintained by the 2nd respondent.

For Petitioner : Mr.V.P.Raman

For Respondents : Mr.K.Krishnaswamy for R1
Mr.C.Manishankhar for R2
No Appearance for R3

O R D E R

The subject matter of challenge in the present writ petition is the entry made by the 2nd respondent in their records showing the petitioner as a defaulter based on the communication made by the 1st respondent Bank and for a consequential direction to the 2nd respondent to remove the name of the petitioner from the list of defaulters.

2.The case of the petitioner is that in the year 1995, he opened credit card account with the 1st respondent Bank and three credit cards were issued to the petitioner. Subsequently, the petitioner decided to return back all the credit cards and accordingly, all the three credit cards were returned on 18.06.1996 and the 1st respondent Bank was requested to cancel all those credit cards. The further case of the petitioner is that the 1st respondent Bank informed the petitioner that there is a balance amount of Rs.2,813.35/- payable by the petitioner towards the credit card dues and the petitioner was asked to settle this amount. The petitioner on receipt of the same, informed the 1st respondent Bank that there is no amount due and payable by the petitioner and it is the 1st respondent Bank who has to pay a sum of Rs.153.82/-.

3.It is stated that the 1st respondent Bank had sent two more credit cards to the petitioner through courier and the petitioner on receipt of the same, informed the 1st respondent Bank that he never asked for any renewal of credit cards and that he has already returned back the three credit cards that were given to him and had requested for the closure of the account and therefore, there is no reason for the 1st respondent Bank to issue two more credit cards to the petitioner.

4.There was a lull for quite sometime and during the year 2009, the petitioner wanted to avail a credit card account with State Bank of India and at this point of time, the petitioner was informed that the 2nd respondent viz., CIBIL had made an entry in their records by showing the name of the petitioner as a defaulter on the ground that the petitioner is due and payable a sum of Rs.7,89,132/-. Aggrieved by the same, the present writ petition was filed before this Court.

5.The 1st respondent Bank has filed a counter and the relevant portions in the counter affidavit are extracted hereunder:

> 17.Subsequently, as per the business decision in the year 2010, the said credit card product was sold off to another financial institution namely "SHAHA

FINLEASE PVT. LTD" having their office at 102, Wellington Business Park-1, Off Andheri Kurla Road, Marol, Andheri East, Mumbai 400 059 in the year 2010 by way of an assignment deed dated February 09, 2010.

18.The card account had been charged off as per the records of the 1st respondent in May 1997 and was reflecting an amount of Rs.10,460.79 as outstanding on April 22, 1997. On account of no payments effected towards the outstanding, the charges had been accrued in the card account and subsequently sold off as per the business decision of the 1st respondent.

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27.It is therefore humbly submitted that in view of the above assignment of the suit mentioned product by this Defendant to the aforesaid company, it is imperative that the said company namely "SHAHA FINLEASE PVT. LTD" is added as necessary and proper party in the present writ petition, as the appropriate respondent handing the said card account.

6.The 2nd respondent has also filed a counter affidavit and the relevant portions in the counter affidavit are extracted hereunder:

11.In view of the above we state that CIBIL is engaged in and providing certain services in relation to the collating credit information to its clients and customers' viz. Banks and various financial institutions. For this purpose banks and various financial institutions from time to time furnish CIBIL with certain statutorily required information on their customers and borrowers. CIBIL thereafter collates such information and prepares credit reports when requested by its customers and clients. CIBIL does not carry out any verification of any information provided to it by any of its customers or clients and further does not advice its clients and customers on whether to undertake a financing transaction or not.

12.I emphatically deny the allegation in Para 29 and 31 of the petition. As explained in the above paragraphs the duty of the 2nd respondent is only to collate the information provided by the various Banks and Financial Institutions from time to time to maintain a data bank of credit information. The 2nd respondent does not verify or investigate the credit information provided by various Banks and Financial Institutions. Further even as per the notifications relied upon by the petitioner it is the duty of the concerned Banks and Financial Institutions to update and inform the changes in the credit information provided by them.

7.Heard Mr.V.P.Raman, learned counsel appearing on behalf of the petitioner, Mr.K.Krishnaswamy, learned counsel appearing on behalf of the 1st respondent and Mr.C.Manishankhar, learned counsel appearing on behalf of the 2nd respondent.

8.The main issue that is involved in this writ petition pertains to the relevant RBI Master Circular which deals with the guidelines given for credit card operations and making entries in the CIBIL based on the information provided by the Bank. For proper appreciation, Clause 6.2(b) of the RBI Master Circular is extracted hereunder:

> b. In case of providing information relating to credit histroy/repayment record of the card holder to a credit information company (specifically authorized by RBI), the bank/NBFC may explicitly bring to the notice of the customer that such information is being provided in terms of the Credit Information Companies (Regulation) Act, 2005.
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> c. Before reporting default status of a credit card holder to the Credit Information Bureau of India Ltd (CIBIL) or any other credit information Company authorized by RBI, banks/NBFCs should ensure that they adhere to a procedure, duly approved by their Board, including issuing of sufficient notice to such card holder about the intention to report him/her as defaulter to the Credit Information Company. The procedure should also cover the notice period for such reporting as also the period within which such report will the withdrawn in the event the customer settles his dues after having been reported as defaulter. Bank/FBFCs should be particularly careful in the case of cards where there are pending disputes. The disclosure/release of information, particularly about the default, should be made only after the dispute is settled as far as possible. In all cases, a well laid down procedure should be transparently followed. These procedures should also be transparently made known as part of MITCs.

9.In the present case, it is clearly borne out by records that the petitioner had surrendered all the credit cards by June 1996 and had also paid a sum of Rs.18,000/- towards full settlement of all the dues towards the credit cards. The 1st respondent Bank informed the petitioner through their letter dated 06.06.1997 that after giving credit for the payment of a sum of Rs.18,000/-, there is a balance amount payable to the tune of Rs.2,813.35/- from June 1996 to 06.06.1997 and the petitioner was directed to settle this amount towards the credit card account. On receipt of this letter from the 1st respondent Bank, the petitioner informed the 1st respondent Bank that he had settled the entire amount and as per his books of accounts, it is the 1st respondent Bank which owed a sum of Rs.153.82/-. The petitioner therefore, requested the 1st respondent Bank to clarify on this issue.

10.It is not known as to why the 1st respondent Bank thereafter proceeded to send two more credit cards to the petitioner when the petitioner had specifically returned back all the three credit cards as early as in the year 1996. The petitioner again reiterated his stand through letter dated 23.09.1997 that he never asked for any renewal of credit cards and that he is not liable to pay any amount to the 1st respondent Bank.

11.It is clear from the counter affidavit filed by the 1st respondent Bank that they had sold the credit card product to another financial institution viz., "SHAHA FINLEASE PVT. LTD., in the year 2010 by way of an Assignment deed dated 09.02.2010. It is also seen from the counter affidavit of the 1st respondent that the credit card account has been charged off as per records of the 1st respondent Bank and in view of the assignment of the credit cards, the balance insofar as the 1st respondent Bank is concerned has been zeroed.

12.The 2nd respondent does not have any independent say on issues of this nature and they merely act up on the information provided by a financial institution. The 2nd respondent collates the various informations received from the financial institution and prepares credit reports when requested by its customers and clients. The 2nd respondent has no role to play by verifying or investigating the credit information provided by various banks and financial institutions. They merely collect the information and update their records and the same is reflected in their records. Thus, the 2nd respondent has taken a stand that the name of the petitioner shown as a defaulter does not in any way burden the 2nd respondent with any responsibility and it was merely based on the information provided by the 1st respondent Bank. The learned counsel for the 2nd respondent submitted that pursuant to the interim orders passed by this Court, the name of the petitioner is not shown as a defaulter in the records maintained by the CIBIL.

13.The materials placed before this Court show that even as on 06.06.1997, the 1st respondent Bank had informed the petitioner that he owes a sum of Rs.2813.35/- after giving the credit to the sum of Rs.18,000/- paid by the petitioner. Even in the counter affidavit filed by the 1st respondent, it is stated at Paragraph No.18 that as on 22.04.1997, a sum of Rs.10,460.79/- was outstanding. It is not known as to how this amount increased to a sum of Rs.7,89,132/- more particularly, since the credit cards were already returned back by the petitioner.

14.It is exactly for this purpose, the Master Circular of the RBI specifically mandates issuance of notice to the customer/credit card holder before any report is sent to CIBIL. The relevant portion in the Master Circular extracted supra clearly states that the customer has to be put on notice and the financial institution must inform the customer that he is going to be reported as a defaulter to the CIBIL and only thereafter, the information can be provided to CIBIL. If the petitioner had been put on notice before the 1st respondent had provided the information to the 2nd respondent, this situation would never have arisen. It requires a lot of explanation as to how a sum of Rs.2,813.35/- increased to a whooping Rs.7,89,132/- more particularly, after the credit cards were returned back to the 1st respondent.

15.The information entered by the CIBIL by showing the name of the petitioner as a defaulter has certainly brought down the credit worthiness of the petitioner which dis-entitles the petitioner to avail any loan or credit card facilities in future. The entry made by CIBIL in their records certainly results in civil consequences and that is the reason why the Master Circular by RBI clearly contemplates issuance of notice to defaulter before his or her name is shown as a defaulter in the records maintained by CIBIL. This mandate has not been followed by the 1st respondent before sending the information to the 2nd respondent and on this ground alone, the entry made by the CIBIL showing the petitioner as a defaulter is liable to be struck off.

16.In view of the above discussion, this Court has absolutely no hesitation in directing the 2nd respondent to remove the entry showing the petitioner as a defaulter and the communication made by the 1st respondent Bank to the 2nd respondent based on which entry was made by the 2nd respondent is held to be illegal. If the 2nd respondent has already stopped showing the petitioner as defaulter in their records, the same shall be continued by virtue of the orders passed in this writ petition. If their records continue to show the petitioner as a defaulter, the same shall be removed, within a period of thirty days from the date of receipt of copy of this order.

17.This writ petition is allowed in the above terms. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

ssr

To

1. Standard Chartered Bank
   Customer Care Unit,
   19, Rajaji Salai,
   Chennai 600 001.

2. Credit Information Bureau (India) Limited,
   Represented by its Directors
   Hoeshst Houst, 6th Floor,
   Backbay Reclamation,
   Nariman Point, Mumbai 400 021.

3. Reserve Bank of India
   Rep by its Regional Director,
   Fort Glacis, Rajaji Salai,
   Chennai 600 001.

+1cc to M/s.V.P.Raman, Advocate, S.R.No.35495

+1cc to M/s.S.Vasudevan, Advocate, S.R.No.34435

W.P.No.9683 of 2010
and
W.M.P.Nos.1 & 2 of 2010

SSN(CO)
UMA(06/07/2022)