IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2022

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P. No.15797 of 2021

S.Rajagopalan ... Petitioner

-Vs-

1.The Housing Development Finance Corporation Ltd., (HDFC)
Rep. by its Legal Head CFO,
Ramon House, HT Parekh Marg,
No.169, Backbay Reclamation,
Churchgate, Mumbai - 400 020.

2.The Deputy General Manager,
HDFC Bank Limited,
HOD - Credit Risk Management,
ITC Centre, II nd Floor,
No.760, Anna Salai,
Chennai - 600 002. ... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, to direct the respondents to dispose the petitioner representation dated 03.05.2021. The extent to be one time settlement offer and the two, 1. Maraimalai Nagar property survey No.393/3, patta No.689 new survey No.393/3A1 H2. 2. Mohan Ram Nagar, Mogapair Village, survey No.256, old survey No.256/1A1A, and split the property Mohan Ram Nagar, Mogapair Village, in accordance with law.

For Petitioner : Mr.G.Radha Krishnan
for Mr.P.Asai Thambi

For Respondents : Mr.K.J.Parthasarathy

ORDER

The Writ Petition has been filed to direct the respondents to dispose the petitioner representation dated 03.05.2021. The extent to be one time settlement offer and the two, 1. Maraimalai Nagar property survey No.393/3, patta No.689 new survey No.393/3A1 H2. 2. Mohan Ram Nagar, Mogapair Village, survey No.256, old survey No.256/1A1A, and split the property Mohan Ram Nagar, Mogapair Village, in accordance with law.

2. The petitioner filed this Writ Petition to direct respondents to dispose his representation dated 03.05.2021. On perusal of the representation dated 03.05.2021, the petitioner extended one time settlement with regard to two properties, comprised in survey No.393/3, new survey No.393/3A1 H2 situated at Maraimalai Nagar, under patta No.689 and another land comprised in survey No.256, old survey No.256/1A1A, situated at Mohan Ram Nagar, Mogapair Village. The petitioner and his brother obtained home loan from the respondents bank by mortgaging the above two properties. Due to loss in his business, the petitioner is not able to maintain the financial difficulties and one of the creditors filed petition before the National Company Law Tribunal and appointed Resolution Professional by an order dated 21.10.2019 and the company was also closed. Thereafter, the petitioner was not able to repay the loan amount. Therefore, the petitioner requested the respondents to settle the loan amount by one time settlement. On his request, the respondents issued letter dated 27.08.2019, thereby offering one time settlement to the petitioner. Accordingly, the petitioner has to settle the loan amount of Rs.2,25,00,000/- on or before 12.09.2019. Since the petitioner could not able to make one time settlement and he made request on 03.05.2021 requesting to extend one time settlement offer and to split up two properties into two parts and offer new settlement.

3. The respondents raised preliminary objection on two floods. The first one is that the Writ Petition itself is not maintainable and another one is that the representation of the petitioner dated 03.05.2021 was rejected.

4. Heard Mr.G.Radha Krishnan, learned counsel appearing for the petitioner and Mr.K.J.Parthasarathy,learned counsel appearing for the respondents.

5. Admittedly, the respondents/bank is a company registered under the provisions of the Companies Act and not an instrumentality of state under Article 12 of the Constitution of India. In this regard, the learned counsel appearing for the respondents relying upon the judgment reported in 2003 (10) SCC 733 in the case of Federal Bank Ltd., Vs. Sugar Thomas as follows :-

> "26. A company registered under the Companies Act for the purposes of carrying on any trade or business is a private enterprise to earn livelihood and to make profits out of such activities. Banking is also a kind of profession and a commercial activity, the primary motive behind it can well be said to earn returns and profits. Since time immemorial, such activities have been carried on by individuals generally. It is a private affair of the

company though case of nationalized banks stands on a different footing. There may, well be companies, in which majority of the share capital may be contributed out of the State funds and in that view of the matter there may be more participation or dominant participation of the State in managing the affairs of the company. But in the present case we are concerned with a banking company which has its own resources to raise its funds without any contribution or shareholding by the State. It has its own Board of Directors elected by its shareholders. It works like any other private company in the banking business having no monopoly status at all.Any company carrying on banking business with a capital of five lacs will become a scheduled bank. All the same, banking activity as a whole carried on by various banks undoubtedly has an impact and effect on the economy of the country in general. Money of the shareholders and the depositors is with such companies, carrying on banking activity. The banks finance the borrowers on any given rate of interest at a particular time. They advance loans as against securities. Therefore, it is obviously necessary to have regulatory check over such activities in the interest of the company itself, the shareholders, the depositors as well as to maintain the proper financial equilibrium of the national economy. The Banking companies have not been set up for the purposes of building economy of the State on the other hand such private companies have been voluntarily established for their own purposes and interest but their activities are kept under check so that their activities may not go wayward and harm the economy in general. A private banking company with all freedom that it has, has to act in a manner that it may not be in conflict with or against the fiscal policies of the State and for such purposes, guidelines are provided by the Reserve Bank so that a proper fiscal discipline, to conduct its affairs in carrying on its business, is maintained. So as to ensure adherence to such fiscal

> discipline, if need be, at times even the management of the company can be taken over. Nonetheless, as observed earlier, these are all regulatory measures to keep a check and provide guideline and not a participatory dominance or control over the affairs of the company. For other companies in general carrying on other business activities may be manufacturing, other industries or any business, such checks are provided under the provisions of the Companies Act, as indicated earlier. There also, the main consideration is that the company itself may not sink because of its own mismanagement or the interest of the shareholders or people generally may not be jeopardized for that reason. Besides taking care of such interest as indicated above, there is no other interest of the State, to control the affairs and management of the private companies. The care is taken in regard to the industries covered under the Industries (Development and Regulation) Act, 1951 that their production which is important for the economy may not go down yet the business activity is carried on by such companies or corporations which only remains a private activity of the entrepreneurs/companies."

The Hon'ble Supreme Court of India held that the Writ Petition is not maintainable against the private complaint. The Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability and it does not mean that the private companies carrying on the business of or commercial activity of banking, discharge any public function or public duty. Therefore, the Writ Petition is not maintainable and is liable to be dismissed.

6. That apart, the Writ Petition is also become infructuous, since the representation of the petitioner dated 03.05.2021 and follow up E-mails dated 03.06.2021 & 10.06.2021 have been replied by the respondents, thereby rejecting the petitioner representation dated 03.05.2021. On merits also, the one time settlement offer dated 27.08.2019, is self working as the proposal was valid on or before 12.01.2019 with a specific clause that further extension of time shall not be entertained. Admittedly, the petitioner failed to pay the amount on or before 12.01.2019. After the period of two years, the petitioner submitted his representation on 03.05.2021, seeking to review the one time settlement offer and the same

has also been rejected by the respondents.

7. That apart, such direction sought for in this Writ Petition cannot be issued, since it is ultimately for the respondents to take a conscious decision in its own interest and to secure/recover the outstanding debts. No bank can be compelled to accept a lesser amount under the one time settlement scheme despite the fact that the bank is able to recover the entire loan amount by auctioning the secured property. When the loan is disbursed by the bank and the outstanding amount is due and payable to the bank, it will always take a conscious decision in the interest of the bank and in its commercial wisdom. Therefore, the Writ Petition is not maintainable and is liable to be dismissed.

8. Accordingly, the Writ Petition stands dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Legal Head CFO,
   Housing Development Finance
   Corporation Ltd., (HDFC)
   Ramon House, HT Parekh Marg,
   No.169, Backbay Reclamation,
   Churchgate, Mumbai - 400 020.

2. The Deputy General Manager,
   HDFC Bank Limited,
   HOD - Credit Risk Management,
   ITC Centre, II nd Floor,
   No.760, Anna Salai,
   Chennai - 600 002.

+1cc to Mr.P.Asai Thambi, Advocate SR. No.929

W.P. No.15797 of 2021

RSV (CO)
PR (28/01/2022)