THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2022

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No. 28533 of 2021

A. Zakir Hussain .. Petitioner

Versus

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

2. The Manager
   Bajaj Finserv
   Unit No. 804, 805, 8th Floor
   No.177, Delta Wing
   Raheja Towers, Anna Salai
   Chennai 600 002 ..Respondents

Petition filed under Article 226 of The Constitution of India praying to issue 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 based on the petitioner's complaint dated 20.11.2021.

For Petitioner : Mr. M. Govindarajan

ORDER

The petitioner has filed this writ petition seeking to issue 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 based on the petitioner's complaint dated 20.11.2021.

2. The petitioner availed loan facility from the second respondent bank to the tune of Rs.4,50,000/- on 11.03.2020. According to the petitioner, he has periodically repaid the loan amount regularly to the second respondent bank and so far he has

paid Rs.2,14,111/-, however, due to the lockdown imposed to curb the spread of Covid-19 Pandemic, the petitioner could not repay the loan amount. Notwithstanding the adverse financial situation faced by the petitioner, the recovery personnel attached to the second respondent bank frequently called upon him and demanded the repayment of the entire balance amount to the tune of Rs.4,62,029/- by slapping exorbitant interest. Further, the recovery personnel demanded such payment to be made within a week. According to the petitioner, he is not liable to pay such a huge sum of Rs.4,62,029/- to the second respondent bank and he disputes it. It is stated that the petitioner's request to repay the loan amount in instalments has not been acceded to. Unable to sustain the frequent threats unleashed by the recovery agents appointed by the second respondent to collect the loan amount, the petitioner has given a complaint to the first respondent on 20.11.2021 seeking to take appropriate action against the second respondent bank for the unfair and unreasonable practice adopted in the matter of recovering the loan amount through threat and coercion. According to the petitioner, the complaint dated 20.11.2021 has not been considered so far and therefore, he has filed this writ petition.

3. The learned counsel for the petitioner submits 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 petitioner, the second respondent bank engaged goondas and hooligans to collect the loan amount from the petitioner without following the due process of law and therefore, the complaint dated 20.11.2021 has been given by the petitioner. However, the first respondent failed to take any action thereof, hence, the learned counsel for the petitioner prayed this Court to issue appropriate direction to the second respondent to recover the loan amount by adopting due process of law.

4. Heard the counsel for the petitioner and perused the materials placed on record. The grievance of the petitioner is that the second respondent bank has resorted to collect the loan amount payable by him without following due process of law and his complaint dated 20.11.2021 submitted to the first respondent has not been acted upon.

5. At the outset, the correctness or otherwise of the grievance expressed by the petitioner that the second respondent bank has engaged muscle men or goons to collect the loan amount cannot be examined by this Court in this writ petition. In fact, the petitioner himself has given a complaint dated 20.11.2021 to the first respondent. The first respondent 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 second respondent herein shall receive and consider complaints relating to the deficiencies in banking or other services. Clause 10 empowers the second respondent to call for the records from the bank against whom the complaint is made. When such power is conferred on the first respondent and the petitioner also already subjected himself to the jurisdiction of the first respondent, this Court is of the view that such complaint preferred by the petitioner before the first respondent on 20.11.2021 shall be directed to be disposed of in accordance with law.

6. In the light of the above facts, this Court hereby directs the first respondent to consider the complaint dated 20.11.2021 of the petitioner and pass orders thereof on merits and in accordance with law, after affording an opportunity of hearing to the petitioner (complainant) as well as the second respondent bank, within a period of eight weeks form the date of receipt of a copy of this order. Accordingly, the writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

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

Copy to

The Manager
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NSK 24/01/2022