BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.07.2022

Pronounced on : 07.09.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.1806 of 2022
and
W.M.P.(MD)Nos.1594, 1595 and 1596 of 2022

T.Uma ... Petitioner

Vs.

1.The Chief Manager,
Canara Bank,
R.C. Church Compound,
Sattur Road,
Sriviliiputhur – 625 125,
Virduhunagar District.

2.The Chairman Cum Managing Director,
Corporate Office, 648, 112, JC Road,
P.B Halsurpete, Nagarathpete,
Bangalore 560 002.

3.The General Manager,
Canara Bank, Zonal Office,
East Veli Strett, Madurai.

4.The Chief Regional Manager,
Regional Office, Tuticorin.

5.Canara HSBC OBC Life Insurance Co. Ltd.,
27/12a, 4th Floor, ATP Tower,
Bye Pass Road, Madurai 625 010. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the respondents to pay the insurance amount of Rs.22.50 Lakhs to the writ petitioner, being the insurance amount to be paid by the 5th respondent.

For Petitioner : Mr.S.Rengasamy

For Respondents : Mr.C.Karthick,
Standing Counsel for R1 to R4.
Mr.M.Karunanithi for R5.

ORDER

Heard the learned counsel on either side.

2.The case of the writ petitioner is as follows:-

2(a).The writ petitioner's husband namely, Mr.R.Thangamarimuthu was working in TNEB. During 2020, they approached the first respondent for housing loan. Loan to the tune of Rs.22.50 Lakhs was sanctioned on 11.09.2020. The property standing in the name of the petitioner's husband was offered as security for due repayment. The housing loan was repayable in 245 installments.

2(b).The sanction letter dated 11.09.2020 stipulated that the loan should be covered by life insurance. The premium was debited from the saving bank account of the petitioner's husband. It was also paid to the fifth respondent insurance company. The fifth respondent however did not process the insurance proposal but refunded the premium amount to the source account. The petitioner's husband thereafter contacted the first respondent. The first respondent had assured the petitioner's husband that he would handle the issue. Subsequently, the first respondent enrolled the petitioner under master policy of the fifth respondent. Master policy means group insurance policy. The allegation of the petitioner is that the first respondent failed to send the premium for the petitioner and her husband to the fifth respondent. When the petitioner's husband was informed by the fifth respondent that no premium amount was received, he once again contacted the first respondent. The premium amount was once again paid to the fifth respondent but the fifth respondent for reasons that are not clear once again returned the premium amount to the source account. The petitioner's husband was affected by Covid-19 and died on 24.05.2021. The death intimation was given to the first and fifth respondents and the first respondent was requested the claim the insurance amount from the fifth respondent and close the account. But there was no response from the first respondent. Hence, the petitioner lodged a complaint before the Canara Public Grievance Redressal System on 26.07.2021 and 28.07.2021. Since there was no response, complaint was lodged before the Banking Ombudsman on 26.08.2021. Since the Banking Ombudsman closed the complaint, the petitioner left with no other opinion filed the present writ petition.

3.The respondents 1 to 4 have filed a detailed counter affidavit. The fifth respondent also filed a counter affidavit.

4.The stand of the respondents 1 to 4 is as follows:-

4(a).After sanctioning loan in favour of the petitioner's husband/R.Thangamarimuthu and the petitioner herein, the first respondent facilitated taking of insurance policy with the fifth respondent. The stand of the bank is that taking of insurance policy is not mandatory or compulsory but optional. Though the premium amount was sent to the fifth respondent on 20.11.2020, the proposal could not be processed owing to incorrect KYC details. The premium amount was also returned through NEFT on 11.12.2020. The respondents 1 to 4 would contend that R.Thangamarimuthu was fully aware of this rejection and that is why, he applied directly to the fifth respondent for a fresh policy on 18.01.2021. The premium amount on the second occasion was paid directly from the saving bank account of Thangamarimuthu to the fifth respondent. This was also rejected for certain reasons. The respondents 1 to 4 would claim that they absolutely unaware of the effort taken by Thangamarimuthu to take insurance policy directly with the fifth respondent. Since the installments were not regularly paid, the account became an NPA. Hence, steps are being taken to proceed under SARFAESI Act.

4(b).The fifth respondent is a joint venture of Canara Bank, HSBC and PNB Bank. It is neither a subsidiary nor a sister concern of Canara Bank. Merely because Canara Bank is having major share in fifth respondent, it would not became a subsidiary or sister concern. The allegation made against the bank are denied. The only relationship between Canara Bank on the one hand and the petitioner and her husband on the other was that of creditor and debtor relationship. The consequences of failure to obtain insurance policy will have to be borne only by the petitioner and the bank cannot be fastened with any blame. The bank also questioned the maintainability of the writ petition.

5.The stand of the fifth respondent is as follows:-

5(a).The fifth respondent received a premium of Rs.1,24,725/- for issuance of group policy in the name of the petitioner's husband and Rs.39,640/- for issuance of group policy in the name of the petitioner. The application forms could not processed because there was some discrepancy regarding certain details. Hence, the premium amount was refunded to the source account. Letters dated 22.12.2020, 23.12.2020 and 29.12.2020 were sent to the petitioner and her husband for payment of premium. It was clarified that the application would be cancelled, if premium was not received. In January 2021, the fifth respondent received enrollment forms from the petitioner and her husband for enrollment in master policy. Premium was also received. Again they could not be enrolled for certain reasons and the premium received towards enrollment was also refunded to the petitioner's husband account on 25.05.2021. Thus, there was no valid insurance policy issued by the fifth respondent in favour of the petitioner or her husband. When there is no concluded contract between the petitioner/her husband on the one hand and the fifth respondent on the other, the fifth respondent is not liable to pay any amount to the first respondent towards the outstanding loan. The fifth respondent also questioned the maintainability of the writ petition and sought its dismissal.

6.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He relied on the decision reported in ***AIR 2019 Madras 220 (Jasmine Ebenezer Arthur v. HDFC ERGO General Insurance Company Limited, Chennai and Others)***. He also filed written arguments. He contended that the petitioner's husband had done everything that he can do. The premium amount was paid to the fifth respondent not once but twice. On both occasions, without any proper reason, the premium amounts got returned and the insurance proposals were also not processed. The first respondent was duty bound to have the loan properly insured. Since the first respondent had failed in their duty, they have to bear the consequences and they cannot shift it to the petitioner. The petitioner's husband passed away and the petitioner is threatened with SARFAESI proceedings. For the fault committed by the respondents, the petitioner is being made to suffer. Though the fifth respondent is a private entity, still it is amenable to writ jurisdiction. The first respondent is a nationalized bank. It is holding major share in the fifth respondent company. In ***AIR 2019 Madras 220***, in similar circumstances, relief was granted and repudiation of insurance policy was set aside. The learned counsel for the writ petitioner would state that there is public law element is present in this case.

7.I carefully considered the rival contentions and went through the materials on record. The facts are deeply troubling. The petitioner's husband died when the pandemic struck. Just one year earlier, the petitioner and her husband had taken housing loan from the first respondent. The sanction letter itself talks about insuring the loan. That is why the first respondent debited the premium amount from the writ petitioner husband's savings bank account and directly paid the same to the fifth respondent. The fifth respondent had returned the proposal since the KYC particulars were not matching with the details set out in the application form. Therefore, the premium amount was refunded to the source account. The petitioner's husband was duly intimated about the same. He availed the assistance of the insurance professional working for the fifth respondent. In January 2021, the petitioner's husband appears to have directly remitted the premium to the fifth respondent and also submitted the application forms. It is obvious that the application forms were submitted through the aforesaid person, who was working for the fifth respondent. Again for reasons which are not quite clear, the application was not processed and the premium amount was once again returned. The petitioner's husband thereafter passed away. The categorical stand of the fifth respondent is that when there is no concluded contract, they cannot be called upon to settle the loan account. The stand of the first respondent is that insuring the loan account is only optional and that they did make a genuine effort to insure the loan account but for certain reasons, the process could not sail through. The petitioner's husband thereafter had approached the fifth respondent directly and the first respondent was not at all involved in the process. The first respondent would claim that the professional whose services were engaged by the petitioner's husband was an independent agent and that the first respondent did not have any control over him.

8.Several disputed questions of fact are involved. The petitioner would strongly assert that the first respondent had held out a categorical assurance that he would take care of the matter. *Prima facie*, it appears that there is no concluded contract between the petitioner/her husband on the one hand and the fifth respondent. In these circumstances, it is difficult to grant relief in writ jurisdiction. It is true that the decision reported in ***AIR 2019 Madras 220*** appears to favour the writ petitioner. But in the said case, the facts were fairly simple and straightforward. The only question which the Court was called upon to answer was whether the ground of repudiation by the insurance company was correct. But in the case of hand, there are too many disputed questions of fact are involved. Therefore, I have to necessarily relegate the petitioner to move consumer forum/civil Court. If any such complaint is filed before the consumer forum or suit is instituted before the civil Court, the same will be disposed of on merits and in accordance with law within a period of eight months after such filing. I make it clear that I have not gone into the merits of the matter. All the contentions of the writ petitioner are left open.

9.With this liberty to the writ petitioner and direction to the consumer forum/civil Court, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

07.09.2022

Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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W.P(MD)No.1806 of 2022

07.09.2022