HON'BLE SRI JUSTICE P. NAVEEN RAO

&

HON'BLE SRI JUSTICE J. SREENIVAS RAO

W.P. No. 7883 of 2016

Date : 15.09.2022

Between:

MOHAMMED YOUSUF ALI SECBAD
S/o Late Md Jahangir Ali Aged 61 years Occ Business Having office at Classic Hosiery Textiles Shop No 91 Opposite CMR Shopping Mall S D Road Secunderabad 500003 Represented by its GPA Holder Farhat Fatima D/o Mohammed Yousuf Ali

Petitioner

And

Authorised Officer Chief Manager Legal
IHFL NEW DELHI
Indiabulls Housing Finance Limited Having office at V Floor Venkat Plaza Panjagutta Hyderabad 500 082
Also at M 62 63 First Floor
Cannaught Place
New Delhi 110001 & others

Respondents

The Court made the following:

HON'BLE SRI JUSTICE P NAVEEN RAO

AND

HON'BLE SRI JUSTICE J SREENIVAS RAO

W.P. No. 7883 of 2016

ORDER: (Per Hon'ble Sri Justice P.Naveen Rao,)

Heard learned counsel for petitioner Sri Avinash Desai and learned counsel for respondents Sri G Kalyan Chakravarthy.

2. This writ petition is filed challenging the proceedings initiated by the respondent financial institution under SARFAESI Act, 2002 as being illegal, arbitrary and contrary to Reserve Bank of India (RBI) Guidelines and the order of the Debts Recovery Tribunal dated 20.1.2016 in S A No. 365 of 2015.

3. Briefly noted the facts are as under:

3.1. Petitioner obtained a loan of ₹.15,00,000/- from the second respondent financial institution with interest at the rate of 12 % with a tenure of 7 years on 25.4.2007. Petitioner alleges that the rate of interest was changed to 18 % and from fixed rate of interest to floating rate of interest based on Indiabulls Prime Lending Rate and further the tenure was changed from 7 years to 144 months (12 years) with an EMI of ₹.25,487/-. Again, unilaterally, the tenure of the loan was further increased from 144 month to 341 months (28 years 5 months) in their internal records. All this was done behind the back of the petitioner. By this exercise the respondent company started adjusting almost the entire money received from the EMIs towards the interest component and a very meager amount towards the principal.

According to petitioner, if the loan tenure was not increased unilaterally, the EMI amount would have been adjusted towards principal and the amount of loan would have got repaid long ago. As against loan amount of ₹. 15,00,000/- by 2015 itself, he repaid ₹.25,11,890/-. Whereas, out of the said amount , only ₹.90,634/- was adjusted towards the principal and the balance of ₹.24,21,256/- was illegally adjusted as interest.

3.2 After paying ₹.25,11,890/- for a ₹.15,00,000/- loan in less than eight years, finally on 4.2.2015 he was constrained to issue a legal notice to the respondents seeking to close the loan account of the petitioner and return the documents of the house No. 64/21 (old) Mallikarjuna Colony, Road No.3, Old Bowenpally, Secunderabad that was pledged as security. On 19.2.2015 the respondent company issued a notice under the SARFAESI Act, 2002 informing the petitioner that as on 19.2.2015, a sum of ₹.1,81,139 was due towards pending EMIs and informed the petitioner to clear the same within 7 days from the date of receipt of notice and in case of failure the respondent would proceed further under the SARFAESI Act,2002. On 23.3.2015 the respondent company issued a demand notice under Section 13 (2) of the Act, 2002 demanding the petitioner to pay an alleged outstanding amount of ₹.17,16,947/-. The petitioner submitted a notice of objections dated 21.4.2015. Not accepting the objections, on 12.6.2015 the respondent company issued possession notice under Rule 8 (1) of the Security Interest (Enforcement) Rules, 2002.

4. Challenging the possession notice dated 12.6.2015 the petitioner filed S.A. No. 365 of 2015 before the Debts Recovery Tribunal, Hyderabad, wherein he raised various pleas including the plea of violation of RBI guidelines and also raised the issue of changing the tenure from agreed 7 years to 12 years and later to more than 28 years illegally along with other issues such as charging exorbitant rates of interest in the name of Floating rate of interest without prior notice and consent of the petitioner and not intimating the unilateral increase of interest and charging the same contrary to RBI guidelines.

5. The Debts Recovery Tribunal passed order dated 20.1.2016 partly allowing the S.A. The Tribunal agreed with the contention of the petitioner that the interest rates charged by the respondents were exorbitant. However, it directed the respondent company to recalculate the loan account of the petitioner with interest @ 22.55 % per annum. The Tribunal also directed the petitioner to repay the entire dues within 30 days on receipt of intimation about the loan outstanding.

6. Learned counsel for petitioner argued that the Tribunal erred in not considering the issues raised by the petitioner. Particularly on the violation of the RBI guidelines by the respondent pertaining to the change in loan tenure from 7 years to 12 years and later to more than 28 years and the aspect of changing the conditions of the loan without informing the petitioner, in violation of several RBI guidelines and other regulations.

6.1. According to learned counsel, guidelines formulated by the RBI have statutory force and are required to be complied by all financial institutions. In the instant case, the RBI guidelines on Repo Rate are violated by respondent company. On binding nature of RBI guidelines, learned counsel relied on the decision of Supreme Court in **ICICI BANK LTD Vs APS STAR INDUSTRIES LTD**[1]

6.2. He would submit that floating interest rates would depend on Repo Rates notified by RBI. When the loan was sanctioned in 2007, the Repo Rate specified by RBI was 7.75 %. Contrary to such Repo Rates, the respondent kept increasing its interest rates from 18 % in 2007 to 25.5.% and was illegally adjusting the EMIs paid towards the arbitrary usurious interest. Further, the Prime Lending Rate (PLR) was increased by respondent company contrary to RBI guidelines. The respondent company have not intimated regarding the change of tenure and increase in interest rates whenever changes are affected as is required by RBI guidelines. He would submit that on both counts i.e., firstly, illegal increase of the tenure from 7 years (84 months) to 12 years (144 months) then to 28 years 5 months (341 months) unilaterally in their internal records and secondly, the aspect of unilateral increase of interest rates contrary to RBI Repo Rates, the respondent company violated the RBI guidelines.

6.3. He would submit that though against the decision of the Tribunal remedy of appeal is available, petitioner invoked the extra-ordinary jurisdiction of this Court as the order of the Tribunal is

[1] (2010) 10 SCC 1

ex-facie illegal. It has not considered the main submission of binding nature of RBI guidelines and violation of guidelines by the respondent company. He would submit that availability of alternative remedy is not a bar to entertain the writ petition. He would further submit that this writ petition is pending since the year 2016 and pleadings are completed. This Court granted interim order on 21.4.2016 staying e-auction of the secured asset and the interim order is in force since 2016. He would submit that as the order of the Tribunal is ex-facie vitiated at this distance of time he need not be compelled to avail the appeal remedy. It would cause great hardship to him.

6.4. Learned counsel placed reliance on following decisions:

BAL KRISHNA AGARWAL (Dr) Vs. STATE of U.P[2]**, POPCORN ENTERTAINMENT Vs CITY INDUSTRIAL DEVELOPMENT CORPORATION**[3]**,** and **DURGA ENTERPRISES PVT LTD Vs PRINCIPAL SECRETARY, GOVT OF U.P**[4].

7. Learned counsel representing the respondent financial institution submitted that since petitioner has an effective and efficacious remedy of appeal under Section 18 of the Act, 2002, the writ petition is not maintainable and is liable to be dismissed relegating petitioner to avail the remedy of appeal.

7.1. He would further submit that the rate of interest and schedule of repayment are as agreed by the petitioner. Petitioner having agreed

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[2] (1995) 1 SCC 614
[3] (2007) 9 SCC 593
[4] (2004) 13 SCC 665

for said terms of loan can not turn around and challenge the action of the respondent company in dealing with the loan account. In view of higher interest component and longer tenure the installment amount was meeting only the interest component. Nothing prevented the petitioner to pay higher installments to repay the principal amount also.

8. Remedy of appeal under Section 18 of the Act is an effective and efficacious remedy. As held by the Hon'ble Supreme Court in **L.CHANDRA KUMAR Vs. UNION Of INDIA**[5] wherein if an aggrieved person has an effective and efficacious statutorily engrafted remedy is available, the writ Court should not entertain the writ petition and should relegate the party to avail such remedy. Taking due note of provision in Section 18 of the Act and judgment of Hon'ble Supreme Court in **L.CHANDRA KUMAR (supra)** this Court has been relegating the petitioners to avail the statutory remedy of application before Debts Recovery Tribunal/appeal before Debts Recovery Appellate Tribunal.

9. But this case presents a peculiar situation. Firstly, the writ petition was instituted in the year 2016. The Court ordered notice before admission and granted interim order. Pleadings are completed. As seen from the pleadings in S A 365 of 2015 and the decision of the Tribunal, the specific plea of the petitioner on binding nature of RBI guidelines and violation of RBI guidelines by the respondent company

[5] (1997) 3 SCC 261

in charging high interest rate and unilaterally charging the loan repayment schedule was not considered by the Tribunal.

10. As per the provisions of Reserve Bank of India Act, 1934 and Banking Regulations Act, 1949 the guidelines notified by RBI are binding on the banks/financial institutions and non compliance thereof vitiates the action of a bank/financial institution. According to petitioner levying interest @ 25.5.% per annum and changing the repayment schedule to 341 months and adjusting substantial portion of EMI to interest portion is in violation of the RBI guidelines.

11. Accepting the said contention of the petitioner would result in declaring the action of the respondent company as illegal and absolving the petitioner from the liability. What is urged by petitioner is valid or not is a core issue and goes to the root of the matter. Specific plea on this aspect is raised by petitioner in paragraph 4 of S.A. 365 of 2015. This aspect was not even considered by the Tribunal. Therefore, the order of the Tribunal is vitiated on this ground alone.

12. Writ remedy under Article 226 of the Constitution of India is an extra-ordinary remedy clothing in an aggrieved person to take recourse to this remedy against any injustice caused to him. The writ court has wide jurisdiction to deal with the dispute and extend long arm of justice to reach out to the victim of injustice and render justice to him. It is not bounded by procedural constraints. Writ Court has no restraint in entertaining any grievance. This remedy can be availed even when an aggrieved person may have an alternative remedy to

seek redress of his grievance. However, over a period of time, exercise of writ jurisdiction is regulated by practice and by law made by the High Courts and Hon'ble Supreme Court fixing self imposed restraint on exercise of the extraordinary remedy. Thus, ordinarily, the High Court does not exercise the extraordinary jurisdiction, if aggrieved person has an effective and efficacious alternative remedy and relegates him to avail such remedy before knocking the doors of this Court.

13. Having regard to presidential law on the subject at the stage of admission, this Court ought to have cautioned the petitioner to avail the remedy of appeal and relegate him. That was not done. Writ was entertained, notice was issued and interim order was granted. Writ Petition is pending for last more than six years. As the issue of applicability of RBI guidelines was not considered by the Debts Recovery Tribunal, even on appeal, the Debts Recovery Appellate Tribunal may have to remand the matter to the Debts Recovery Tribunal.

14. Having regard to this infirmity in the order of the Tribunal, that since this writ petition is pending for last more than six years, that the issue of applicability of RBI guidelines is a core issue going to the root of the dispute, following the view adopted by the Hon'ble Supreme Court in similar fact situation in the three decisions relied upon by the learned counsel for petitioner, we are inclined to remit the matter to the Debts Recovery Tribunal by setting aside the order impugned instead of driving the petitioner to avail alternative remedy of appeal

under Section 18 of the Act, 2002 before the Debts Recovery Appellate Tribunal.

15. Accordingly, writ petition is allowed. The order of the Tribunal in S.A.No.365 of 2015 dated 20.1.2016 is set aside and matter is remanded to Debts Recovery Tribunal II at Hyderabad for consideration of the issues raised by the petitioner afresh by affording opportunity of hearing to both parties. As the issue is very old, the Tribunal may expedite the hearing and pass orders within four months from the date of receipt of copy of this order. The Interim Order dated 21.4.2016 shall continue till final orders are passed by Debts Recovery Tribunal in S.A.No.365 of 2015. No costs. Miscellaneous applications, if any pending, stand dismissed.

P.NAVEEN RAO,J

J SREENIVAS RAO, J

Date: 15.09.2022
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