17.04.2023
sayandeep
Sl. No. 05
Ct. No. 05

CAN No. 1 of 2023
in
WPA 24444 of 2022

Subhagata Joardar
-Versus-
Union of India & Ors.

Mr. Timir Baran Saha
...... for the petitioner
Ms. Farnaz Nasim
......for the UOI
Ms. Sreemoyee Mitra
Mr. Kapil Guha
.......for the Canara Bank

The respondent Bank has filed an application for vacating an order passed by this Court on 29.03.2023 in the writ petition. By the order impugned, the Court had held that Clause (m) of the Sanction Memorandum dated 16.03.2022 may be construed to mean a concessional rate of interest at 6.70% to apply for the housing loans sanctioned and disbursed within 31.03.2022 and the said rate would remain till the loan completes three years from the date of disbursement.

Learned counsel appearing for the respondent Bank/Canara Bank places the documents in the affidavit-in-opposition to submit that the relevant Clause (m) of the Terms and Conditions of the Sanction Memorandum dated 16.03.2022 should have been read as 0.20% and not as 6.70%. Counsel also relies on the rates of interest on rupee loans and advances – Repo Linked Lending Rate (RLLR) application w.e.f. from

12.02.2023 at 9.4%. Counsel also places a Notification dated 04.09.2019 issued by the Reserve Bank of India which states , *inter alia*, that all new floating rates shall be benchmarked to one of the four factors mentioned under Clause 3.1(a) of such Notification which includes the Reserve Bank of India policy repo rate.

It is evident that the petitioner's grievance for filing the writ petition is the increase of the rate of interest from 6.70% to 9.40%. This could be reflected from the prayers in the writ petition which is for a command on the respondent Bank to deduct the monthly installments from the petitioner's account at the rate and in the manner as provided in the Sanction Memorandum dated 16.03.2022.

The Sanction Memorandum indicates on the first page that the RLLR rate was 6.90% and that the concessional rate was given as 0.20% as per Circulars to the petitioner for the concerned housing loan. The said column clearly mentions that "the interest rate is linked to RLLR" and that the RLLR and the actual lending rate are subject to review and variation from time to time as per RBI Guidelines and also subject to any changes in the financials of the borrower. The Clause further provides that the changes in the RLLR and the actual lending rate will be notified in the notice board of the Bank from time to time. This clause should be read in tandem with clause (m) where the rate of interest of 6.70% was stated to remain till the loan completes three years from the date of disbursement. The concessaional rate of interest was 6.70% as on 16.03.2022. The Sanction Memorandum cannot be seen in isolation and must be seen with the Housing Loan Agreement which clearly mentions in the annexure that the interest type would be "*floating*". Apart from this, the Notification of RBI dated 04.09. 2019 also states in Clause 3.1(a) that the floating rates for personal or retail loans and loans to MSMEs extended by banks from 01.10.2019 shall be benchmarked to any of the following factors including the RBI policy repo rate. The policy repo rate shown in page-27 of the affidavit-in-opposition as of 10.02.2023 is 9.40%.

Upon considering the documents relied on by the respondent Bank, it is evident that the petitioner availed of the housing loan through the Sanction Memorandum dated 16.03.2022 on a floating-rate basis and further that the concessional rate of interest which was prevailing as on 16.03.2022, i.e., 6.70% was subject to change according to the changes in the RBI repo rate. Since the rate of interest increased from 6.70% to 9.40%, the respondent Bank cannot be held frozen to charge 6.70% interest for all times to come. The concession given to the petitioner of 0.20% remains unchanged and the petitioner shall continue to get the benefit of the concessional rate of interest which would also be evident from the Sanction Memorandum.

It is also evident that the respondent Bank does not have any control over the RLLR which would determine the rate of interest to be charged by the Bank as the rates are fixed by RBI.

The above factors persuade this Court to vacate the order dated 29.03.2023. It is also made clear that the construction given to Clause (m) of the Sanction Memorandum was without the documents which were subsequently placed by the Bank.

Since according to petitioner, nothing further remains in the writ petition, WPA 24444 of 2022 along with all connected applications are accordingly disposed of in terms of the above.

(Moushumi Bhattacharya, J.)