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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2023

CORAM

THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.20643 of 2022
and
W.M.P.No.19766 of 2022

M.Shirijah .. Petitioner/Party-in-Person

Vs.

1.The Ombudsman
Reserve Bank of India, Chennai.

2.IDFC First Bank Ltd.,
represented by its Manager,
455, Third Floor, Teynampet,
Chennai – 18. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to proceedings in RBI/CMS/N 202223023081250/2021 – 2022 dated 13.07.2022 of the 1st respondent and quash the same and consequently, to dispose my complaint dated 15.06.2022 for appropriate direction to the 2nd respondent to revoke the illegal proceedings dated 19.09.2020 and 22.10.2020 and to return the advance amount of Rs.11,25,000 to me along with the interest @ 36% from the date of their receipt till its realization, within a time limit fixed by this Court.

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For Petitioner	..	Ms.M.Shirijha, Party-in-Person.
For R1	..	Mr.C.Mohan, For M/s.King and Partridge
For R2	..	Mr.S.K.Mariyappan

ORDER

The Writ Petition has been filed in the nature of a Certiorarified Mandamus calling for the records relating to the proceedings in RBI/CMS/N 202223023081250/2021 – 2022 dated 13.07.2022 of the 1st respondent and quash the same and direct disposal of the complaint given by the petitioner which was dated 15.06.2022.

2.The petitioner, while serving as Judicial Officer, had made an offer to the 2nd respondent to purchase initially Flat No.1, 2nd Floor, North Facing (West side), Nathans Aradhana Apartments, Old No.21, New No.7, Temple Avenue Srinagar Colony, Saidapet, Chennai – 600 015, which was earlier mortgaged with the 2nd respondent, on a private offer, on "as is where is" basis for a total sum of Rs.66,00,000/-. The petitioner had enclosed a

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Demand Draft for a sum of Rs.6,60,000/-. The 2nd respondent had issued a reply on 19.10.2019 accepting the offer given by the petitioner, namely, the sale consideration of Rs.66,00,000/-. Thereafter, the petitioner found that there was yet another flat available for sale under the same condition, namely, No.T2, 3rd Floor, South Facing, Nathans Aradhana Apartments, Old No.21, New No.7, Temple Avenue Srinagar Colony, Saidapet, Chennai – 600 015, which had also been earlier mortgaged with the 2nd respondent and which the 2nd respondent could not sell through e-auction. The offer for this was for a total consideration of Rs.75,00,000/- and in addition to the earlier amount of Rs.6,60,000/-, the petitioner had paid a further amount of Rs.4,65,000/-, which indicated that the total advance amount given was Rs.11,25,000/-.

3.The acceptance for the offer was on 21.01.2020 by the 2nd respondent. Since this brings about a binding contract between the petitioner and the 2nd respondent, consequent to the offer made, let me extract the entire letter dated 21.01.2020, which is as follows:

"From *21.01.2020*

Mrs.M.Shirijha,

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No.F3, Aradhana Apartments,
No.7, Temple Avenue,
Srinagar Colony, Saidapet,
Chennai – 600115.

<u>Sub:</u> Purchase on "As is Where is" & "As is What is" basis of the Secured Assets of THIRIPURA CHITS PRIVATE LIMITED Flat No.T2, 3rd Floor, South Facing, Nathans Aradhana Apartments, Old No.21, New No.7, Temple Avenue, Srinagar Colony, Saidapet, Chennai – 600 015 by way of Private Treaty, possession of whcih was taken over under section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI ACT"). read with the Security Interest (Enforcement) Rules, 2002 ("Rules").

<u>Ref:</u> Private treaty for the mentioned property LAN:4829132.

Dear Sir/Madam,
This has reference to the Offer Letter submitted by you dated 21/01/2020 in respect buying the secured assets of THIRIPURA CHITS PRIVATE LIMITED ("the Borrower"), whereas you had submitted your final Quotation of Rs.75,00,000/- (Rupees Sixty Six Lakhs only) for purchase of such secured asset consisting of All that piece and parcel of Old Flat No.T2, 3rd Floor, South Facing, Nathans Aradhana Apartments, Old No.21, New No.7,

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Temple Avenue Srinagar Colony, Saidapet, Chennai – 600 015.

We hereby convey that your final offer of Rs.75,00,000/- (Rupees seventy five lakhs only) herein after referred as Total Purchase consideration to be received for the aforesaid Secured Asset of the Borrower stands confirmed as IDFC First Bank Limited (erstwhile Capital First Limited and amalgamated with IDFC Bank Limited) towards interest in purchasing the property address.

The Sale Certificate in favour of Mrs.M.Shirijha will be issued in accordance with the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, ("SARFAESI Act") read with the Security Interest Enforcement Rules, 2002 only upon realization of the purchase consideration in full by IDFC First Bank Limited (erstwhile Capital First Limited and amalgamated with IDFC Bank Limited) from Mrs.M.Shirijha. Please note that until registration of the said Sale Certificate to Mrs.M.Shirijha i.e. you shall neither have any right, title or interest in the said secured asset nor any claim to the same against any person including IDFC First Bank Limited (erstwhile Capital First Limited and amalgamated with IDFC Bank Limited).

Authorised Signatory,

IDFC First Bank Limited
(erstwhile Capital First Limited and

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amalgamated with IDFC Bank Limited)"

4.A reading of the same shows that it was a simple agreement between the petitioner on the one hand and the 2nd respondent on the other hand. The 2nd respondent was in possession of the flat. They tried to sell it through SARFAESI Act or through E-auction. They could not do so. They had taken possession. It was left vacant in their possession. The petitioner saw it. The petitioner first wanted to buy a 2 bedroom flat. The petitioner should have rested satisfied with purchase of that. But at that particular point of time, being a Judicial Officer, the petitioner over-reached herself and decided to buy the 3 bedroom flat and extended her vision to purchase that particular 3 bedroom flat. The sale consideration naturally increased from Rs.66,00,000/- to Rs.75,00,000/-. Originally, an advance of Rs.6,60,000/- was given, adding another Rs.4,65,000/-, and the petitioner had paid a total advance of Rs.11,25,000/- and made an offer to purchase the 3 bedroom flat for Rs.75,00,000/-. But it was in exchange of the earlier offer to purchase the 2 bedroom flat and to adjust the advance already paid for that to purchase 3 bedroom flat. Once that particular shift in the offer was made from purchasing the two bedroom flat and now offering to

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purchase 3 bedroom flat and further requesting an adjustment of the advance paid entirely to a different property, the onus was entirely on the 2nd respondent to either accept it or to reject it. They had to take a decision. They could very well have stated that the original offer was only for the 2 bedroom flat and not for 3 bedroom flat. But they accepted the offer made by the petitioner herein. Once they had accepted the offer, a binding agreement comes into play between the parties. It is an acceptance by *consensus ad-idem*. There was an offer. There was an acceptance. The consideration had been determined. It is clear to both sides that the only aspect to be done is for payment of balance sale consideration by the petitioner herein.

5.Then the petitioner put a condition, that she being a Judicial Officer, had to get necessary permission from the Registry of the High Court to purchase the property. As a matter of fact, she should have obtained such permission even before making the offer, but let me not a enter into discussion on that particular fact. She had atleast applied for permission to purchase the flat and to pay the balance sale consideration.

6.Circumstances intervened where the Registry was not in a position to grant permission and the petitioner was not in a position to press for such

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permission. Therefore, the petitioner rescinded the contract. She sought return of the advance amount paid.

7.In the meanwhile, on 19.09.2020, the 2nd respondent herein had forwarded a further letter wherein, they had given a string of conditions for the said offer. This was not attached when the first offer was accepted. These are additional conditions subsequent to the agreement between the petitioner and the 2nd respondent. These are conditions which the petitioner always can an object and to reject or seek modification. It is in these conditions that the forfeiture clause of the advance amount paid was insisted by the 2nd respondent. This cannot be made binding on the petitioner herein unless the petitioner specifically accepts those conditions, since these are conditions post-agreement between the petitioner and the 2nd respondent. I would therefore hold that retaining the advance amount by the 2nd respondent cannot pass the scrutiny of this Court.

8.The original offer was for purchase of Rs.75,00,000/-. An advance of Rs.11,25,000/- had been paid. That was accepted. That was withdrawn by the petitioner herein. If the 2nd respondent wanted, they could have imposed whatever loss they had suffered, owing to the rescinding of the contract by the petitioner herein. But they cannot hold on the advance amount. That

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holding back or forfeiture is beyond the terms of the acceptance. This aspect had then proceeded before the 1st respondent. The 1st respondent had taken a conscious decision not to give any finding.

9.In the meanwhile, the petitioner had also given a complaint against the officials of the 2nd respondent. This is condemnable. This cannot be permitted. The petitioner should, in all account, withdraw the complaint. The respondents were only acting in terms of a civil contract between them and the petitioner. There is no criminality attached to the claim of the 2nd respondent. There was no criminal intimidation. There is no motive. There is no *mens-rea* in the said act. It was a manner of interpretation of the agreement by the 2nd respondent and the petitioner has her own interpretation of the agreement.

10. The 2nd respondent may take a decision to return back the amount. It would only be advisable that the petitioner also takes a conscious decision with respect to the First Information Report which had been lodged on a complaint given by her. If it is found that the said First Information Report had been lodged owing to the influence exerted as a Judicial Officer, then, the 2nd respondent may point out that fact also before the Court where they have filed an application under Section 482 of Cr.P.C to quash the said

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complaint.

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11.The 2nd respondent will then have a case against the petitioner for giving a false complaint against the petitioner. A direction is given that the 2nd respondent must refund the advance of Rs.11,25,000/- to the petitioner specifically without any interest, within a period of four weeks from the date of receipt of a copy of this order.

12.With the above observations, this Writ Petition stands disposed of. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

24.02.2023

Index:Yes/No
Internet:Yes/No
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To

1.The Ombudsman
Reserve Bank of India, Chennai.

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2.IDFC First Bank Ltd.,
represented by its Manager,
455, Third Floor, Teynampet,
Chennai – 18.

C.V.KARTHIKEYAN,J.

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