IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

WP No.28763 of 2017

S.Rajanikanth ... Petitioner

versus

1.The Secretary to Government
Ministry of Finance,
Jeevan Deep Building,
Parliament Street, New Delhi 110 001

2.The Governor
Reserve Bank of India
18th Floor, Shahid Bhagar
Singh Road, Mumbai 400 001

3.The Chairman
State Bank of India, State Bank Bahavan
Madam Cama Road, Mumbai 400 021

4.The Principal Secretary
State of Tamil Nadu Secretariat
Fort St.George, Chennai 600 009

5.The District Collector
Thiruvannamalai District

6.The Superintendent of Police
Thiruvannamalai District

7.The Manager
State Bank of India, Sathanoor
Thiruvannamalai District ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing respondents 1 & 2 to avail a mechanism or cell to redress the grievance of farmers those who are unable to pay the loan amount in so for as Agriculture loan is concerned and ensure that the farmers will not be subjected for harassment by the Bank employees on the guise of recovering loan amount form them.

For the Petitioner	:	Mr.R.Thirumoorthy
For the Respondents	:	No appearance, for the first respondent Mr.C.Mohan, for M/s.King & Patridge, for respondents 2, 3 and 7 Mrs.R.Anitha, Special Government Pleader, for respondents 4, 5 and 6

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

We have heard Mr.R.Thirumoorthy, learned counsel for the petitioner, Mr.C.Mohan, learned counsel for respondents 2, 3 and 7 and Mrs.R.Anitha, learned Special Government Pleader, for respondents 4, 5 and 6.

2. The writ petition is filed with the following prayer :

> *"Writ Petition filed seeking a Writ of Mandamus directing respondents 1 and 2 to avail a mechanism or cell to redress the grievance of farmers those who are unable to pay the loan amount in so for as agriculture loan is concerned and ensure that the farmers will not be subjected for harassment by the Bank employees on the guise of recovering loan amount form them and thus render justice."*

3. Learned counsel for the petitioner submits that though the Hon'ble Supreme Court has directed the banks that they should not indulge in coercive tactics for recovery of loan, still, agents are appointed for recovery and the agriculturists are harassed. There is no mechanism for redressal of the grievances of the farmers. Respondents 1 and 2 should provide for such a mechanism to redress the grievances and ensure that the farmers are not subjected to harassment by the bank employees on the guise of the recovering amount from them.

4. There cannot be any debate with the proposition that if the banks have to recover the outstanding loan amount, the same has to be recovered in

accordance with the procedure established by law. Coercive method of recovery by private agents, if appointed by banks, is not permissible. The banks certainly cannot use muscle power to recover the loan amount.

5. The Reserve Bank of India has also issued “Guidelines on Fair Practices Code for Lender”. Engagement of recovery agents, though permitted, stringent guidelines are laid down. The following precautions are required to be taken by the agents and the banks.

> *“The agency hired by the bank to recover loans must only engage persons whose antecedents have been checked and verified by police authorities. The antecedents must be reverified from time to time as indicated by the bank's policy. Banks should inform the borrower the details of the recovery agency. The agency must issue identity card and an authorization letter which should be shown to the borrower. The authorisation letter must carry the telephone number of the recovery agency. All calls made by the agency to the borrower must be recorded and the borrower informed of this at the beginning of the call. The details of the recovery agencies must be placed on the bank's website. When a borrower makes a representation, his case cannot be sent to the*

recovery agent for recovery proceedings until his representation has been disposed off. However, if bank feels the borrower is frivolous in his complaints, he may be referred to the recovery agent. In case the matter is sub judice, banks must take utmost care. The concerns and grievances of the borrower must be addressed through a structured mechanism as far as engaging recovery agents is concerned and this should be communicated to the borrower. Banks should not offer high incentives to recovery agents which may tempt them to use unethical means. The recovery agents should be properly trained. RBI requested IBA to formulate, in consultation with IIBF, to formulate a certificate course for Direct Recovery Agents with minimum 100 hours of training. Furthur the recovery agents must engage only trained persons. RBI has reiterated that only legal means have to be employed to recover dues. The repossession clause must be observed in letter and spirit. RBI has encouraged banks to make use of the Lok Adalats for recovery of personal, credit cards or housing loans. Banks are encouraged to utilise the service of credit counsellors to counsel borrowers. When banks receive complaints against their recovery agents, they ought to look into it *seriously. In case complaints are made to RBI about recovery agents, RBI may consider imposing a ban on a bank from engaging recovery agents. Supervisory strictures may be passed by RBI whenever the court passes strictures /imposes penalty on banks for the actions of their recovery agents. Further banks are asked to periodically review the recovery mechanism and give their feedback/suggestions for improvement in the guidelines.*

The 'Guidelines on Fair Practises Code for Lender' vide our circular No DBOD Leg No BC 104/09.07.007/ 2002-03 dated May 05, 2003 also lays down exhaustive guidelines and has reiterated that muscle power must not be used for recovery of loans. The borrowers should not be disturbed at odd hours and should not be harassed."

6. On a perusal of the above guidelines, it is manifest that no muscle power can be exercised by the agents. If coercion is employed, then certainly the agriculturists will have every right to approach the police authorities and take recourse against the said persons. Recovery can be made by the banks only in accordance with the provisions of the statute.

7. In light of all the aforesaid guidelines of the Reserve Bank of India, we do not find a general direction needs to be issued again. Individual cases of the agriculturists can certainly be considered to a particular agriculturist.

8. With these observations, the writ petition is disposed of. There will be no order as to costs. Consequently, WMP Nos.30940 to 30942 of 2017 are closed.

(S.V.G., CJ.) **(P.D.A., J.)**
15.06.2023

Index : yes/no
Neutral Citation : Yes/No
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