BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.26642 of 2023
and
W.M.P.(MD)No.22904 of 2023

R.Muniyandi ... Petitioner

Vs.

1.The Banking Ombudsman,
Reserve Bank of India Building 2nd Floor,
Fort Glacis, Post Box No.40,
16, Rajaji Salai,
Chennai-600 001.

2.The Manager,
State Bank of India,
Maduram Complex,
No.2, Ambedkar Road,
Madurai-625 002.

3.The Manager,
SBI Life Insurance,
215, Theni Main Road,
P.P.Chavadi,
Madurai-625 016. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order dated 05.09.2023 in RBI/CMS/N202324023201382/2023-24 issued by the 1st respondent and quash the same, and consequently direct the 1st respondent to provide an opportunity of personal hearing as mandated under Clause 12 of the Banking Ombudsman Scheme.

For Petitioner : Mr.M.Dinesh Hari Sudarsan

For Respondents : Mr.C.Karthik
Standing Counsel for R2 & R3

ORDER

Heard both sides.

2. The petitioner stood as guarantor for the loan availed by one Arul Helena. She has since passed away. The petitioner claims to be her husband. But this claim was contested by one Gnanaraj. Succession OP was filed before the jurisdictional Court and the petitioner lost therein. The petitioner earlier filed W.P.(MD)No.3347 of 2019 for directing SBI Life Insurance to close the home loan account. The petitioner herein could not succeed in getting relief. It was disposed of in the following terms:-

> "2. One Arul Helena availed housing loan from the first respondent. The loan was also duly ensured with the second respondent. Arul Helena passed away in the year 2017. There arose dispute regarding status of the petitioner. One Gnanaraj claimed to be the actual husband and contested the claim of the petitioner. He along with the daughter filed S.O.P.No.8 of 2017 before the first Additional District Judge, Madurai. S.O.P was disposed of on 09.09.2020. Aggrieved by the same, the petitioner along with his daughter filed C.M.A. (MD)No.527 of 2020. It was dismissed by this Court on 29.09.2021. It is relevant to note that the respondents herein were very much parties to the S.O.P proceedings.
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> 3. The second respondent has filed a counter indicating that a sum of Rs. 10,30,053/- was paid in favour of the first respondent to the account of the deceased Arul Helena on 01.11.2019. In these circumstances, the prayer made in the writ petition no longer survives. However, the learned counsel appearing for the petitioner submits that

> the petitioner has executed the guarantee deed and that he is now called upon to pay exorbitant interest. It is open to the petitioner to approach the first respondent and negotiate for closure of the loan account. If any such application is filed by the petitioner, the first respondent will consider the same and dispose of the same on merits and in accordance with law

Since the bank did not arrive at any settlement with the petitioner, the petitioner moved the banking ombudsman. The banking ombudsman negatived the petitioner's complaint as not maintainable. Challenging the same, the writ petition came to be filed.

3. The learned counsel for the petitioner contended that the first respondent was bound to have given a personal hearing to the petitioner and that therefore, the impugned order has to be set aside and the matter has to be remanded for fresh hearing.

4. Though the petitioner may be technically correct, considering the facts and circumstances of this case, I am not inclined to interfere. As rightly pointed out by the learned standing counsel for the bank, the petitioner is a guarantor and therefore, his liability is co-extensive with the principal borrower. The principal borrower is no more. The principal amount has been settled by the insurance company. What remains to be paid is only interest. It is for the petitioner to negotiate with the respondent bank and obtain concession. This Court will not be justified in issuing any positive mandamus to the bank to concur any particular terms and conditions.

G.R.SWAMINATHAN, J.

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5. The Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes/ No
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