

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 16.12.2022

% **Judgment delivered on: 09.01.2023**

+ **LPA 466/2022 & CM APPLs. 34939/2022, 54542/2022**

TUSHAR JARWAL AND ANR

..... Appellants

Through: **Mr. Tushar Jarwal and Mr. Rahul Sateerja, Advocates.**

versus

STATE BANK OF INDIA & ORS.

..... Respondents

Through: **Mr. R. K. Sinha, Mr. Tushar Jaiswal and Ms. Akshita Jain, Advocates for R-1.**

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present LPA is arising out of an Order dated 06.07.2022 of a learned Single Judge of this Court, in W.P.(C.) No. 6913/2021 ("Impugned Order").

2. The undisputed facts of the present case reveal that the Appellants before this Court had applied for a joint housing loan and were accordingly

sanctioned Rs.51,50,000/- from the State Bank of India, RAPC Branch, New Delhi.

3. The Appellants and the Respondent Bank entered into the Loan Agreement on 20.06.2009 and the same stipulated a fixed rate of interest at 8% for the first year and, thereafter, a floating rate of interest. The tenure of the loan was for 15 years (180 months), and the Appellants were required to furnish regular EMIs to repay the loan. Clause 5 of the Loan Agreement had provided that the Respondent Bank had a right to reduce or increase the EMI, or extend the repayment period, or both, consequent upon revision in the interest rate. Clause 4 (v) of the Loan Agreement had also granted liberty to the Respondent Bank to alter the rate of interest at its sole discretion in the event of major volatility in interest rates during the subsistence of the Loan Agreement. Clause 4(i)(b) further stated that the change of interest rate would be informed to the Appellants vide a notice and it was stated that the Appellant would be deemed to have notice of the change in interest rate if the same is published on the notice board of the Respondent Bank's branch office / newspaper publication is effectuated / a publication on the Respondent Bank's website is effectuated / entries of the interest rate charged in the passbook/ statement of accounts furnished to the Appellants.

4. The Appellants have submitted before this Court that they regularly paid EMIs to the Respondent Bank from June 2009, without any default and at times the EMIs were also reduced. However, the Appellants were never informed about any increase in the rate of interest. It was submitted that the Appellants were under the impression that the interest rate has never been increased as at no point of time, the EMI's were increased. The Appellants

have given details of the payment made by them from time to time and have further stated that they had approached the Respondent bank in December 2020 to foreclose the loan account. It was submitted that at such point in time whence they sought to foreclose the Loan Account, upon making an inquiry regarding the outstanding amount due to the Respondent Bank, they were informed that there is an outstanding principal amount of Rs.33 Lakhs due to be paid to foreclose the loan account.

5. It was submitted that the dispute started sometime in December 2020, when the Appellants learnt that the outstanding principal loan amount is still Rs. 33 Lakhs, even though the 15-year loan term was about to conclude in 2024. It was submitted that the Appellants believe that there are some serious irregularities and manipulations with respect to its Loan Account. Further, upon perusing the amortization schedule, which was furnished upon the demand of the Appellants, they learnt that the tenure of the Loan was increased from 180 months to 274 months and the Respondent Bank, unilaterally, without obtaining any consent of the Appellants, increased the repayment schedule. The loan amount due to the Respondent Bank had also increased. On a loan of Rs. 51.5 lakhs, the Respondent Bank's calculation showed that a sum of Rs. 1.34 crores were still due. It was further submitted that the interest payment on a loan of Rs. 51.5 lakhs was ascertained at approximately Rs. 82 lakhs.

6. As there was serious dispute in the matter of repayment of loan as alleged by the Appellants, they have stated in the Writ Petition that they visited the Assistant General Manager of the Respondent Bank on 29.12.2020, and they were informed that the recovery process in the

Respondent Bank is an automatic system which is sacrosanct. Thus, no mistake has crept in on recovery of dues.

7. The dispute between the Appellants and the Respondent Bank was not able to reach an amicable conclusion and finally, the Appellants on 23.02.2021 filed a complaint before the Banking Ombudsman in accordance with the Banking Ombudsman Scheme, 2006.

8. On 25.03.2021, the Appellants received a response from Banking Ombudsman informing the Appellants that the complaint submitted by the Appellants has been deemed to be closed under Clause 11(3)(a) of the Banking Ombudsman Scheme, 2006 and the Banking Ombudsman has directed the Respondent Bank to propose a resolution to the Appellants in writing and rectify all the discrepancies in the loan account.

9. Thereafter, the Appellants sent various reminders to the Bank and to the Banking Ombudsman. Subsequently, a second complaint was filed before the Banking Ombudsman on 07.05.2021. A reply to the same was received by the Appellants on 07.06.2021 wherein it was stated that the complaint has been forwarded to the Respondent bank. Subsequently a response was also submitted by the Bank to the Banking Ombudsman and finally, the Banking Ombudsman rejected the second complaint on 13.07.2021 holding that the Respondent Bank has acted in accordance with the loan agreement.

10. Aggrieved, the Appellants preferred a Writ Petition before this Court for quashment of the order passed by the Banking Ombudsman dated 13.07.2021. Further, a prayer was made to direct the Respondent Bank to

foreclose the loan account as according to the Appellants, they have made the entire payment.

11. The Appellants before the learned Single Judge had placed reliance upon the guidelines issued by the Reserve Bank of India titled “FAIR PRACTICES OF CODE FOR LENDERS” dated 05.05.2003 to put forth their submission that the Respondent Bank herein has acted in violation of the same in as much as the Respondent Bank failed to intimate the Appellants about the unilateral change in rate of interest and tenure of the loan. The Appellants herein have also placed reliance on the Master Circular on loans and advances dated 01.07.2015, issued by the Reserve Bank of India among other documents to put forth their submission regarding erroneous calculation of interest rates and fixation of EMIs. The Appellants further raised a ground that the resolution of dispute was within the domain of the Banking Ombudsman and that it failed to bring the dispute to a logical conclusion.

12. A perusal of the Impugned Order shows that the learned Single Judge had dismissed the Writ Petition which is under Appeal herein, on the ground that there as there are disputed questions of facts involved. It was held that since there are serious disputes pertaining to interpretation of clauses contained in the Loan Agreement, the dispute cannot be adjudicated while exercising Writ Jurisdiction under Article 226 of the Constitution of India. The order passed by the learned Single Judge read as under:

1. The present petition invokes Article 226 of the Constitution of India, 1950 seeking quashing of order dated 13th July, 2021 passed by Respondent No. 2 – Banking Ombudsman along with

a direction to Respondent No. 1– State Bank of India [hereinafter, “Respondent Bank”] to revoke the imposition of increased rate of interest and extended tenure on home loan account held by Petitioners. The reliefs sought in the present petition are as follows:

“(a) this Hon'ble Court be pleased to issue a Writ of Certiorari or any other appropriate writ, order or direction in the nature of Certiorari under Article 226 of the Constitution of India quashing the Impugned Order dated 13.07.2021 passed by the Banking Ombudsman i.e. Respondent no. 2; and/or

(b) this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction in the nature of mandamus under Article 226 of the Constitution of India directing the State Bank of India/Respondent no. 1 to foreclose the loan account as per the payment made by the Petitioners i.e. Rs. 97,25,010/- till date which are as per the original EMI schedule of Loan Arrangement Letter dated 20.05.2009; (c) this Hon'ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction in the nature of mandamus under Article 226 of the Constitution of India directing the Reserve Bank of India i.e. Respondent no. 3 to take suitable action against the State Bank of India i.e. Respondent no. 1 and to conduct a detailed audit of all loan accounts to ensure that the honest borrowers are not exploited;”

2. Briefly stated, the case of Petitioners is that they entered into a loan agreement dated 20th June, 2009 with Respondent Bank for joint home loan of Rs. 51,50,000/-. Under the said arrangement, loan was approved at a fixed rate of interest @ 8% for the first year, and floating rate of interest thereafter for a period of 180 months (15 years). Ms. Malika Chaudhary, counsel for Petitioners, states that relying on a clause in the

loan agreement permitting Respondent Bank “to reduce or increase the EMI or extend repayment period or both consequent upon revision in interest rate”, the Respondent Bank increased the loan tenure under an amortization schedule from 180 months to 274 months unilaterally, which was later reverted to 180 months by way of an amended amortization schedule, upon consideration of Petitioners’ objections.

3. Ms. Chaudhary submits that Petitioners have made a total repayment of Rs. 97,25,010/- in the month of July, 2021 inclusive of an additional payment of Rs. 18,93,216/- on 08th July, 2019 and 19th July, 2021 in complete discharge of their liabilities against the said loan. Thereafter, Petitioners requested Respondent Bank to issue foreclosure/ discharge certificate for their home loan account, but the same has not been done.

4. Petitioner No. 1 then approached Respondent No. 2 raising his grievances pertaining to the said loan repayment. Vide order dated 13th July, 2021, Respondent No. 2 rejected their complaint stating that “the tenure of the loan may increase if rate of interest (ROI) is increased and EMI is constant. To reduce the tenure, the borrower has option to increase the EMI. Banks do not increase EMI unless specifically requested by the complainant or agreed by him at the time of sanctioning of loan” and permitted the foreclosure of loan account only “if the borrower agrees to repay all outstanding dues before maturity.”

5. Aggrieved thereby, Petitioners have approached this Court by way of a writ petition. It is contended that Respondent Bank has acted in violation of the guidelines issued by Respondent No. 3 – Reserve Bank of India titled ‘FAIR PRACTICES OF CODE FOR LENDERS’ in as much as they failed to intimate the Petitioners about the unilateral change in rate of interest and loan tenure. Further, the loan agreement has been drafted in one-sided manner and all clauses are beneficial to Respondent Bank alone. Although the Respondent Bank later agreed to revert to the original loan tenure of 180 months under the original amortisation schedule, they are still

unlawfully demanding an outstanding of Rs. 31,26,989/- from the Petitioners which is Rs. 11,40,640/- more than the amount due under the original loan arrangement.

6. Petitioners seek a direction to Respondent Bank to accept the payment made by them as full and final settlement of their dues, and foreclose their loan account, as is apparent from the prayers reproduced hereinabove. The Respondent Bank on the other hand is contesting the claims of Petitioners, and submits that further amounts are due from Petitioners under the loan account. Upon consideration of the contentions advanced, it is evident that the issues raised herein are purely factual in nature, requiring adjudication on the basis of oral and documentary evidence sought to be produced by the parties. There are serious disputes pertaining to interpretation of clauses contained in the loan agreement. Whether the Respondent Bank was authorised to unilaterally amend the rate of interest or tenure of the loan in terms of loan agreement; or whether any amount is in fact payable by Petitioners, are questions of construction of terms of contract, which cannot be adjudicated by this Court, while exercising its writ jurisdiction under Article 226 of the Constitution of India. 1 It is a settled position of law that a Court cannot venture into disputed questions of facts and conduct a minitrial in the garb of exercising its writ jurisdiction. Therefore, this Court is not the appropriate forum to seek declaration(s)/ reliefs prayed for in the instant proceedings.

7. For the reasons stated above, the Court is not inclined to entertain the present petition and accordingly, the same is dismissed, along with other pending applications.

8. All rights and contentions of the parties are left open, and it is clarified that observations made hereinabove shall not be considered as expression of any views upon the merits of the case.

13. This Court has carefully gone through the order passed by the learned Single Judge and the undisputed facts of the instant case make it very clear that the Appellants did sign an agreement on 20.06.2009, with open eyes, for a joint home loan for Rs.51,50,000/-. Further, the agreement did empower the bank to reduce or increase the EMIs or to extend repayment period or both, consequent upon revision in the interest rate.

14. The Appellants' contention that the Loan Agreement has been drafted in a one-sided manner and that all clauses are beneficial to the Respondent Bank alone, does not help the Appellants in any manner.

15. In the opinion of this Court the present Appeal certainly involves disputed questions of facts which cannot be adjudicated upon in a Writ proceeding. The dispute is purely factual in nature, requiring resolution through oral and documentary evidence. The dispute also involves interpretation of clauses contained in the Loan Agreement and, therefore, in the considered opinion of this Court, the learned Single Judge was justified in declining to exercise Writ Jurisdiction under Article 226 of the Constitution of India.

16. The Apex Court in the case of ***State of M.P. And Others v. M.V. Vyavsaya & Co.***, (1997) 1 SCC 156, in the matter of exercise of Writ Jurisdiction where disputed questions of facts are involved, has held as under:

“15. It has been repeatedly held by this Court that the power of the High Court under Article 226 of the Constitution is not akin to appellate power. It is a supervisory power. While exercising this power, the court does not go into the merits of the decision

taken by the authorities concerned but only ensures that the decision is arrived at in accordance with the procedure prescribed by law and in accordance with the principles of natural justice wherever applicable. Further, where there are disputed questions of fact, the High Court does not normally go into or adjudicate upon the disputed questions of fact. Yet another principle which has been repeatedly affirmed by this Court is that a person who solemnly enters into a contract cannot be allowed to wriggle out of it by resorting to Article 226 of the Constitution. This Court has also repeatedly emphasised the inadvisability of making interim orders which have the effect of depriving the State (the people of the State) of the revenues legitimately due to it. The court should not take upon itself the responsibility of staying the recovery of amounts due to the State unless a clear case of illegality is made out and the balance of convenience is duly considered. Otherwise, the odium of unlawfully depriving the State/the people of the monies lawfully due to it/them would lie upon the court. Particularly in the case of excise contracts, generally speaking, it is wellnigh impossible to recover any arrears after the event. It is for this reason that the rules of all the States insist upon adequate deposits and securities beforehand to be adjusted towards the last months of the year. These provisions and the spirit underlying them cannot be ignored or violated. Now, in the case of this contract, the loss to the State is the whopping sum of Rs 2,88,54,431. How much of this loss is attributable to the impugned orders is difficult to assess but it can be said with certainty that but for these orders, the State would have conducted the re-auction in the month of May 1995 itself in which event the loss to the State would have been far less. The respondent-firm carried on till December 1995 without properly and fully paying the amounts due under the orders of the court. A very, very sad tale.”

17. The Apex Court also in the case of **Radha Krishan Industries v. State of H.P. and Others.**, (2021) 6 SCC 771 in the matter of exercise of writ

jurisdiction where disputed questions of facts are involved has held in Paragraph 27.6, as under:

“27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

18. In light of the aforesaid Judgments delivered by the Hon’ble Supreme Court, a perusal of the Impugned Order, grounds raised by the Appellants and documents on record, purely disputed questions of facts are involved in the instant dispute. Questions which arise for consideration are whether proper rate of interest was levied? Whether total installments were paid? Whether The terms and conditions of the agreement were adhered to or not?. These are certainly issues which need to be investigated in civil proceedings and not in exercise of Writ Jurisdiction of this Court under Article 226 of the Constitution of India.

19. Accordingly, this Court does not find any reason to interfere with the order passed by the learned Single Judge. The Appeal is dismissed in light of the aforesaid.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

JANUARY 09, 2023

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