IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5183 of 2016

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Kumari Madhu Lata wife of Late Dinesh Kumar Resident of Kishori Niketan, Jai Prakash Nagar, Post- G.P.O., P.S.- Jakkanpur, District- Patna

... ... Petitioner/s

Versus

1. The Union Of India through the Finance Secretary, Govt. of India, New Delhi, Delhi.
2. The General Manager, State Bank of India, Retail Assets Central Processing Centre RACPC, 1st Floor
3. The Assistant General Manager, State Bank of India, Retail Assets Central Processing Centre RACPC,
4. The General Manager, SBI Life Insurance Co. Ltd., Kapas Bhawan, Plot No.- 3A, Sector-10, CBD Belapu
5. The Zonal Manager, SBI Life Insurance Co. Ltd. G.V. Mall, Boring Road Crossing, Patna- 800001
6. The Banking Ombudsman, Bihar and Jharkhand, Reserve Bank of India Building, South Gandhi Maidan, Pa
7. The Assistant Manager, Banking Ombudsman, Bihar and Jharkhand, Reserve Bank of India Building, Sout

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Nandlal Kumar Singh, Adv.
	:	Ms.Madhuri Lata, Adv.
	:	Mr. Manish Kumar, Adv.
	:	Mr. Ajeet Kumar Singh, Adv.
For the Respondent/s	:	Mr. Amrendra Nath Verma, Sr. Panel Counsel
	:	Mr. Mukesh Kumar, CGC
	:	Mr. Anjani Kumar Mishra, Adv.
	:	Mr. Ambarish Bhardwaj, Adv.

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT
Date : 19-07-2024

1. The Writ petition has been filed for issuance of appropriate Writ or direction(s) to the respondent authorities/Bank authorities for quashing the part of Clause (ix) of the Agreement dated 23.03.2010 of the 3rd respondent and for quashing the Letter No. 2380 dated 05.01.2016 issued by the 7th respondent and further direction to the Respondent Nos. 2 and 3 to recover 50% of the term loan along with interest from SBI Life Insurance (Respondent No. 4) which was to be deposited by the husband of the petitioner and to take appropriate action against the erring Officers in accordance to law.

2. The brief facts of the case are that the husband of the petitioner namely Dinesh Kumar along with his elder brother namely Rameshwar Lal filed an application jointly for home loan of Rs. 15 lakhs on 10.02.2010 before the Retail Asset Central Processing Centre of SBI, Patna, on the basis of pay slip and documents of land. Out of 15 lakhs an amount of Rs. 12,59,000/- term loan was sanctioned on 23.03.2010. The authority of the State Bank of India insured the loan amount from SBI Life Insurance Company Ltd. as per the arrangement Letter dated 23.03.2010 (Annexure-1). The repayment by way of installment is Rs. 15,000/- per month. As it is a joint loan 50% loan amount installment i.e. Rs. 7,500/- out of total installment of Rs. 15,000/- was to be paid by the husband of the petitioner and the balance of the installment of Rs. 7500/- was to be paid by the elder brother of the petitioner's husband namely Rameshwar Lal which is apparent from the statement of the Bank from 01.04.2015 to 21.10.2015 of the Home Loan Account No. 31108462181 (Annexure – 3). Out of the two borrowers, one borrower namely Dinesh Kumar who is the husband of the petitioner died on 27.06.2015 at All India Institute of Medical Sciences, New Delhi. The petitioner filed an application before the authority concerned and Banking Ombudsman, Reserve Bank of India, Patna for taking an action to exempt 50% of the loan amount share along with the interest of the husband of the petitioner and to recover the same from SBI Life Insurance Company Ltd. Without considering the facts and circumstances of the case, the claim of the petitioner was rejected vide Letter No. 2380 dated 05.01.2016 (Annexure-1/A). It is urged by the Learned counsel for the petitioner that out of two borrowers, one borrower namely Dinesh Kumar the husband of the petitioner, died on 27.06.2015. In view of the death of the petitioner's husband, the SBI Life Insurance is liable to pay loan, as it is covered by insurance. The condition imposed under Clause (ix) of the Agreement Letter is not sustainable in the eye of law and therefore, prayed to quash the Clause of the agreement covered under the Annexure – 1 and further prayed to set aside the orders of the Ombudsman, in rejecting the claim of the petitioner.

3. No counter affidavit has been filed on behalf of the respondents.

4. Heard learned counsel for the petitioner as well as learned counsel for the respondents. Perused the records.

5. On perusal of the entire material, it is evident that the State Bank of India has issued Home Loan and Term Loan to the joint borrowers i.e. to the husband of the petitioner, Mr. Dinesh Kumar, and to his elder brother Rameshwar Lal.

6. Clause (ix) of Annexure-1 reads as follows:-

> ***Home Loan Group Insurance:-*** *The advance will be covered by SBI life Dhanaraksha Plus LPPT Scheme for Single Elder Applicant and the premium with service tax of 10.30% will be 58217/-. A Health Questionaire would need to be submitted for the elder applicant. Medical examination, if required, shall be intimated by SBI Life.*

7. On perusal of the said Clause, it is evident that the husband of the petitioner and the elder brother of the husband of the petitioner has agreed to the contents of the agreement and signed the agreement. Clause (ix) of the Agreement specifically disclose that the Life Insurance Dhanaraksha Scheme would be applicable for Single Elder Applicant. Hence, it can be construed that it is the beneficiary for Rameshwar Lal who is the elder brother of Dinesh Kumar but not for Dinesh Kumar.

8. During the pendency of the Writ application, I.A. No. 3013 of 2017 has been filed for amending the prayer to the effect i.e. "For direction to the respondents to refund the amount of Rs.

5,12,500.00/- alongwith interest which has been deposited by the petitioner on 02.03.2017 with a condition, subject to the result of the writ application”. The interlocutory application also disclose that the State Bank of India has issued notice No. AGM/RACPC/PAT/1740 dated 02.02.2017 under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 wherein the petitioner was directed to pay the amount along with interest.

9. Hence, it can be construed that the *lis* between the parties is purely a civil dispute between the bank and the applicants. It is relevant to mention the judgment of the Hon’ble Supreme Court in **PHR Invent Educational Society Vs. Uco Bank and others reported in 2024 INSC 297** wherein the lordships have held:

> *" **21.** Recently, in the case of Celir LLP (supra), after surveying various judgments of this Court, the Court observed thus:*
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> > *“101. More than a decade back, this Court had expressed serious concern despite its repeated pronouncements in regard to the High Courts ignoring the availability of statutory remedies under the RDBFI Act and the SARFAESI Act and exercise of jurisdiction under Article 226 of the Constitution. Even after, the decision of this Court in Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC*

(Civ) 260], it appears that the High Courts have continued to exercise its writ jurisdiction under Article 226 ignoring the statutory remedies under the RDBFI Act and the SARFAESI Act."

22. *It can thus be seen that it is more than a settled legal position of law that in such matters, the High Court should entertain a petition under Article 226 of the Constitution particularly when an alternative statutory remedy is available.*

30. *It has however been clarified that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance."*

10. The above judgment of the Supreme Court writ petition squarely applies to the present case and Writ petition is not maintainable under Article 226 of the Constitution of India as an effective alternative remedy is available to the petitioner. Moreover, the present case does not fall under any of the exception carved out by the Apex Court in the case of **Commissioner of Income Tax & Ors. Vs. Chhabil Dass Agarwal reported in (2014) 1 SCC 603**. Furthermore, the order of the Ombudsman under Annexure 1/A is also not violative of the fundamental rights of the petitioner in any manner. The husband of the petitioner signed the Agreement, being aware of Clause (ix) of the said agreement. Therefore, there is no illegality or irregularity in Clause (ix) of the bank agreement dated 23.03.2010.

11. In view of the above observations, the writ petition is dismissed as it is devoid of merits.

12. However, the petitioner is at liberty to challenge the said order before the appropriate Forum within four weeks from the date of receipt of copy of this order.

13. Further, the appropriate Forum from the date of application shall dispose of the matter within six weeks as the matter pertains to the year 2015.

14. Interlocutory Application(s), if any, shall stand disposed of.

(G. Anupama Chakravarthy, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	26.07.2024
Transmission Date	N/A