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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.06.2024

PRONOUNCED ON : 19.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.12825 of 2021
and W.M.P.Nos.13617 of 2021 & 11696 of 2023

1. M/s. Ramaniyam Real Estates Pvt. Ltd.,
   Rep by its Managing Director V.Jaggannathan,
   17/35, 2nd Main Road Gandhi Nagar,
   Adyar, Chennai – 20.

2. V.Jaggannathan
3. Gita Jaggannathan ... Petitioners

-Vs-

1. PNB Housing Finance Ltd.,
   Chennai Branch,
   Rep. by its Authorized Signatory,
   3rd Floor, Sudershan Building,
   No.14, Whites Road, Royapettah,
   Chennai – 600 014.

2. The Reserve Bank of India,
   16, Rajaji Salai, Fort Glacis,
   Chennai – 600 001. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the first respondent letter vide their impugned letter dated

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13.05.2021, demanding the petitioners to pay Rs.28,57,938.76 as pre closure charges and penalty along with 18% GST and quash the same and direct the first respondent to refund the pre-closure charges collected from the petitioners under coercion and duress.

For Petitioners	: Ms.S.Vaitheeswari For Mr.S.Sundaresan
For Respondents	
For R1	: Mr.Arupam Rahuraman For Mr.C.Seethapathy

ORDER

This writ petition has been filed challenging the communication dated 13.05.2021, thereby demanding the petitioners to pay a sum of Rs.28,57,938.76 as pre-closure charges and penalty along with 18% GST.

2. The first petitioner company represented by its Managing Director viz., the second petitioner. The third petitioner is the wife of the second petitioner and one of the directors of the first petitioner company. The petitioners had approached the first respondent seeking non-housing loan for business purposes. The first respondent had sanctioned loan to the tune of Rs.10,00,000,000/- (Rupees ten crores) on 02.05.2018. As per the conditions, the loan repayment term is for a period of 120 months at

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floating rate of interest of 9.50% for first 12 months from the date of first disbursement and thereafter be reset to then prevailing fixed interest and the equated monthly installments is Rs.12,93,976/- per month.

3. After repayment of Rs.1,57,46,942/-, due to various reasons including Covid-19 and some decrease in the real estate business, the petitioners were under compulsion to close the loan account on repaying the outstanding amount at one stretch. Therefore, the petitioners approached the first respondent to preclose the loan account. The first respondent duly informed the petitioners that they require to pay pre-closure charges. When the petitioners approached the first respondent for return of documents, the petitioners were informed to pay pre-closure charges so that the documents will be returned. According to the petitioners, though there was no terms and conditions in the loan agreement about the pre-closure charges, the petitioners were paid the said amount and release the documents.

4. The learned counsel appearing for the petitioners submitted that the pre-closure charges together with 18% GST is illegal, arbitrary.

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The petitioners due to Covid-19 and other circumstances intended to pre-close the loan account and accordingly paid the entire loan amount and closed the account. There was no condition imposed in the loan agreement to pay pre-closure charges while pre-closing the loan account. The petitioners never committed any default from the date of borrowal of loan and they were prompt in repayment of loan amount as per the conditions.

4.1. She further submitted that as per the terms and conditions of the loan agreement, it mandates the borrower to indemnify the first respondent to make good the loss, if the loan is pre-closed within one year of the first disbursement. Therefore, it is an implied condition that no pre-closure charges will be levied if the loan is pre-closed after 12 months from the date of first disbursement of loan amount. The petitioners were disbursed loan on 02.05.2018 and the twelve months period was completed as on 01.05.2019. Only after two years from the date of first disbursement of loan, the petitioner had pre-closed the loan account by repaying the entire loan amount.

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5. The learned counsel appearing for the first respondent vehemently contended that the writ petition itself is not maintainable since, the first respondent is a private financial institution. In order to object same, the learned counsel appearing for the petitioners relied upon the judgment reported in ***(2009) 8 SCC 257*** in the case of ***Sardar Associates Vs. Punjab & Sind Bank***, laying down that if in terms of guidelines issued by the RBI, a right is created in a borrower, writ could be issued. Therefore, the first respondent is a banking company and it falls within the ambit of state under Article 12 of the Constitution of India.

6. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7. On perusal of Clause 4(2)(b) of the Fair Procedure Practice, it is clear that the customer would be issued a sanction letter that contained prepayment charges and thereafter written acceptance of the terms and conditions by the customer would be kept on record by the

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first respondent. Further Clause 4(4)(d) also says that on securities would be released on repayment of all dues or non-realisation of the outstanding among of loan. Therefore, only after repayment of entire dues, the documents which were deposited as security would be released. As per the terms and conditions of the loan agreement, the first respondent is entitled to charge pre-closure charges.

8. As per the regulations of National Housing bank in circular No.63 dated 14.08.2014, all national housing bank specified that housing finance companies shall not charge foreclosure charges or pre-payment penalties on all floating rate terms loans sanctioned to individual borrowers, with immediate effect. However, upon confusion regarding the applicability of the said circular towards parties other than individual borrowers, on enquiries the National Housing Bank issued circular No.66 dated 03.09.2014, thereby clarified that the said circular is on foreclosure charges or pre-payment penalties in respect of all floating rate term loans sanctioned to individual borrowers. Loan in which company, firm etc., is a borrower or co-borrower, therefore, is excluded from its purview.

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9. The first respondent is a company and as such the circular dated 14.08.2014, is not at all applicable to the loan borrowed by the petitioners. In fact, the petitioners had paid pre-closure charges to the first respondent as per the terms and conditions without any objections. Now they cannot challenge the demand made by the first respondent that too after made the entire payment including the pre-closure charges. It is also made clear from the circular issued by the second respondent dated 02.08.2019, it is clarified that the banks shall not charge foreclosure charges or prepayment penalties on any floating rate term loan sanctioned for purposes other than business, to individual borrowers with or without co-obligants.

10. In the case of hand, it is a commercial loan obtained by the petitioners in which the first petitioner is a company. Therefore, they are liable to pay pre-closure charges and hence the first respondent rightly imposed pre-closure charges. That apart, Clause 6 of the terms and conditions set out in the sanction letter and the Clause 12 of the disbursement letter are clearly described the manner in which the charges

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will be levied in the event of pre-mature foreclosure of the loan. Therefore, the petitioners are liable to pay the pre-closure charges. Further the petitioners had agreed to sell the property which was offered as security after full repayment of the said loan along with due interest to the first respondent. Therefore, the petitioners were duly informed about the payment of pre-closure charges and the same was agreed by the petitioners.

11. In view of the above discussions, this Court finds no infirmity or illegality in the communication sent by the first respondent and the writ petition is devoid of merits and liable to be dismissed. Accordingly, the Writ Petition stands dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

19.06.2024
(½)

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

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To

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