IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2024

CORAM:

THE HON'BLE MR. JUSTICE M.DHANDAPANI

W.P. No.27370 of 2023
and
W.M.P. No.26804 of 2023

D. Anantha Kumar ... Petitioner

Versus

1. The Reserve Bank of India,
No.16, Rajaji Salai,
Parrys,
Chennai – 600 001.

2. The Banking Ombudsman,
C/o. Reserve Bank of India,
Fort Glacis,
Chennai – 600 001.

3. The Tamil Nadu Mercantile Bank,
Rep. By its Manager,
Branch Head,
Kelambakkam Branch,
Chennai – 603 103. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent vide CIN :U65110TN1921PLC001908, dated 17.05.2022 and consequential order, vide CIN :L65110TN1921PLC001908, dated 05.08.2023 and quash the same and further direct the 3rd respondent to return the original Title Deeds in Document No.9484 of 2018, dated on 18.09.2018 pertaining to the property bearing Door No.22, Plot No.1 & 2 situate in Survey No.6/1B2 to an extent of 5,476 sq. ft. land and building situated at Thaiyur Village, Thiruporur Taluk, Kanchipuram District to the petitioner as per his representation, dated 04.04.2022.

For Petitioner	:	Mr.M. Rajasekhar
For Respondents	:	Mr.V. Chandrasekaran, Senior Panel Counsel for R3 No appearance for R1 & R2

ORDER

This writ petition has been filed to call for the records of the 3rd respondent vide CIN :U65110TN1921PLC001908, dated 17.05.2022 and consequential order, vide CIN :L65110TN1921PLC001908, dated 05.08.2023 and to quash the same and further direct the 3rd respondent to return the original Title Deeds in Document No.9484 of 2018, dated on 18.09.2018 pertaining to the property bearing Door No.22, Plot No.1 & 2 situate in Survey No.6/1B2 to an extent of 5,476 sq. ft. land and building situated at Thaiyur Village, Thiruporur Taluk, Kanchipuram District to the petitioner as per his representation, dated 04.04.2022.

2. A brief facts leading to the filing of this writ petition are as follows :-

The petitioner and his wife jointly availed housing loan from the 3rd respondent vide sanction letter, dated 23.08.2018 for a sum of Rs.1,46,50,000/- at the rate of 8.75% interest per month and the schedule of re-payment was fixed as 180 months. It is further stated that the 3rd respondent inspected the property of the petitioner, thrice, along with Valuer and Civil Engineer and the process took almost one and half months. It is further stated that the entire structural aspect of the building was considered by the 3rd respondent and thereafter only, loan was sanctioned and EMI amount of Rs.1,46,420/- per month was fixed for repayment. Subsequently, the property was registered jointly in favour of petitioner and his wife, on the file of the Sub-Registrar, Thiruporur. It is further stated that apart from the said mortgage of house property, a vacant land to an extent of Rs.2388.53 sq. ft. situated in Plot No.9, ols survey No.327 (Part), Sathakuppam Village, Thiruporur was also given as collateral security and thereby the title deeds were deposited in favour of the 3rd respondent bank. Subsequently, the petitioner has paid the EMI amounts and in some period, he paid lump sum amount towards principal payment and thus, he settled the entire dues payable by him in the year 2022 itself. Thereafter, he approached the 3rd respondent, whereby he sought for cancellation of deposit of title deeds in respect of the Housing property as well as for return of original title deeds. It is the case of the petitioner that vide Communication, dated 25.03.2022, the 3rd respondent informed him about the commercial rate of interest imposed on the said housing loan and directed him to pay the differential amount for the re-classified rate of interest. Pursuant to the said communication, the petitioner has also forwarded his explanation to the 3rd respondent. Suddenly, to a shock and surprise, the 3rd respondent sent an impugned communication, dated 17.05.2022, wherein it is stated that the rate of interest for the said housing loan is 13.75% instead of 8.75% and thereafter a consequential order was sent by the 3rd respondent, vide their letter dated 05.08.2023. Aggrieved over the impugned order, dated 17.05.2022, this writ petition has been filed.

3. Learned counsel for the petitioner firstly submitted that by way of impugned Communication, dated 17.05.2022, the 3rd respondent determined the rate of interest for the petitioner's housing loan, suddenly at 13.75%, instead of 8.75%, by pointing out that the subject house building was used for commercial purpose and therefore the enhanced rate of interest imposed on the petitioner is contrary to the terms and conditions stipulated earlier by the 3rd respondent. He also submitted that the petitioner settled the entire amount and there is no default committed by

the petitioner. He further submitted that the petitioner neither suppressed any fact nor intended to cheat the 3rd respondent and furthermore, when plan as well as other documents were properly submitted by the petitioner prior to sanction of loan by the 3rd respondent, passing of the impugned Communication imposing exorbitant rate of interest for the said loan on the petitioner is arbitrary. He also submitted that in earlier occasions, inspections were conducted by the authorities of the 3rd respondent, thrice and at that relevant point of time, the 3rd respondent neither pointed out the commercial rate nor issued show cause notice in respect of re-classification of the said loan to commercial rate and therefore, the impugned Communication issued by the 3rd respondent leads the petitioner to pathetic situation. In view of the above, the impugned Communication issued by the 3rd respondent is unjustifiable and the same is in violation of principles of natural justice. Hence, he prays for quashment of the impugned Communication, dated 17.05.2022 passed by the 3rd respondent as well as consequential order, dated 05.08.2023. Also he prays for issuance of direction to return the original title deeds of the petitioner, within a time frame to be fixed by this Court. On the aforesaid score, he prays for allowing of this writ petition.

4. Mr.V. Chandrasekaran, learned Senior Panel Counsel appearing for the 3rd respondent submitted that initially housing loan was sanctioned by the 3rd respondent at the rate of interest of 8.75%, without ascertaining the fact of rental basis. Further, he denied the submissions made by the learned counsel for the petitioner and submitted his arguments based on the counter affidavit filed by the 3rd respondent, wherein it is stated that at the time of sanctioning of the said loan, the 3rd respondent was under the impression that the said house building is occupied by the same family members of the petitioner, but later they came to know that the subject building consists of 3 units in the 1st floor and 3 units in the 2nd floor, and they are meant for rental.

5. Further, he drew the attention of this Court to the guidelines issued by the Reserve Bank of India in respect of Commercial Real Estate (CRE) exposures as well as illustrations on loans for multiple houses, which is intended to be rented out. More particularly, he pointed out the attention of this Court to para No.2 of Appendix -2 viz., Illustrative Examples issued by the RBI in the year 2009. He strongly argued that as per the said guidelines, whenever the total number of units is more than two, the exposure for the third unit onwards has to be treated as CRE Exposure as the borrower may be renting these housing units and the rental

income would be the primary source of repayment. Hence, the Communication issued by the 3rd respondent is legally sustainable and said Communication impugned warrants no interference by this Court. Therefore, he prays for dismissal of this writ petition.

6. This Court bestowed its best attention to the contentions advanced by the learned counsel on either side and perused the materials available on record.

7. Admittedly, the petitioner availed housing loan from the 3rd respondent for a sum of Rs.1,46,50,000/- in the year 2018 at the rate of 8.75%. It is not in dispute that the petitioner paid the EMI amounts regularly. On perusal of the records, it reveals that on completion of monthly instalments, the petitioner approached the 3rd respondent, whereby he sought for return of original title deeds, as according to the petitioner, he paid the entire loan as per the contract entered between the petitioner and the 3rd respondent vide sanction letter dated 23.08.2018. At this juncture, the 3rd respondent woke up from sleep and determined the rate of interest for the said housing loan at 13.75%, i.e., commercial rate, stating that there are three units in each floor of the building ie., in 1st and 2nd floor, which was availed by the petitioner and his wife jointly. This Court perused the RBI guidelines, dated 09.09.2009 produced by the

learned counsel for the 3rd respondent. It is not in dispute that the authorities of the 3rd respondent conducted inspection of the subject building prior to sanction of the loan. Only on satisfaction of documents as well as the reports submitted by the authorities of the 3rd respondent, the subject loan was sanctioned to the petitioner at the rate of 8.75%. However, now the 3rd respondent is taking a “U turn” and imposed the rate of interest for the said loan at 13.75%, by way of Communication, dated 17.05.2022, which is impugned herein. Thus, it is crystal clear that the RBI guidelines are of the year 2009 and the 3rd respondent without ascertaining the details has sanctioned the subject loan and putting the blame on the petitioner, which is not fair and the same is contrary to the agreement entered into between the petitioner and the 3rd respondent. Therefore, the petitioner cannot be held responsible for the fault of the 3rd respondent. It is quite normal that any individual, who agreed for a loan re-payment at certain percentage of interest, if suddenly informed to repay the said loan with higher rate of interest would definitely push him/ her to a pathetic situation. Hence, as per the original contract i.e., rate of interest @ 8.75%, the petitioner settled the entire loan amount and when such being the position, no law in force, permits the bank/ 3rd respondent to retain the original title deeds.

8. In view of the reasonings stated supra, the impugned Communication, dated 17.05.2022 as well as consequential order, dated 05.08.2023 are non-est in law and they are liable to be quashed and therefore, the same are hereby quashed. Further, the 3rd respondent is directed to return all the original title deeds pertaining to aforesaid loan to the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

9. With the above directions, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

24.09.2024

Index : Yes / No
Internet : Yes / No
vsi2

M.DHANDAPANI, J.

vsi2

To

1. The Reserve Bank of India,
No.16, Rajaji Salai,
Parrys,
Chennai – 600 001.

2. The Banking Ombudsman,
C/o. Reserve Bank of India,
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3. The Tamil Nadu Mercantile Bank,
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