IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 17.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.28859 of 2023

R.Muralidharan ... Petitioner

Vs.

The General Manager,
Credit Risk Management,
HDFC Bank, Chennai 600 001. ... Respondent

Prayer: Writ petition filed under Article 226 of Constitution of India seeking for issuance of Writ of Mandamus, directing the respondent to consider the representation of the petitioner dated 30.08.2023 in accordance with law by returning the original document pertaining to the loan account No.350892819 stands in the name of Dr.Kanthammal, mother of the petitioner after issuing no due certificate by the HDFC Bank, Anna Nagar Branch, Chennai to secure the ends of justice.

For Petitioner : Mr.R.Sankarasubbu
For Respondent : Mr. K.J.Parthasarathy

ORDER

The petitioner herein seeks a direction to the respondent to consider his representation dated 30.08.2023 seeking return of original documents pertains to the loan account No. 350892819, sanctioned in the name of Kanthammal, mother of the petitioner.

2. It is the case of the petitioner that his mother Kanthammal availed loan in the respondent bank in loan account No.350892819. The entire loan amount was paid by the petitioner's mother as early as on 18.12.2017 and subsequently, she died on 12.05.2021. Inspite of settling of entire loan amount, the respondent bank failed to hand over the title documents of the secured property of the petitioner, mainly on the ground that there are outstanding due amounts in the other loan accounts of the petitioner's mother. Aggrieved by the same, the petitioner has come before this court.

3. When the writ petition is taken up for hearing, the learned counsel for the petitioner was directed to argue on the maintainability of the writ petition against the private bank.

4. The learned counsel for the petitioner submits that the

respondent bank is under the public duty. Therefore, the writ petition under Article 226 of Constitution of India is maintainable against the respondent bank. In support of his contention, learned counsel for the petitioner relied on following decisions.

> ***i) Shanthi Vs. Bank of Baroda in W.P.(MD) No.12613 of 2016, dated 09.08.2017.***
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> ***ii) M/s Pearson Drums & Barrels Pvt. Ltd. Vs. The Manager Consumer Education & Protection Cell of Rreserve Bank of India and others in W.A.No.21710 of 2017 dated 10.03.2021 on the file of the Culcutta High Court.***
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> ***iii)Rahul Mehra and others Vs. Union of India (UOI) and others in W.P.(C) No.1680/2000, dated 04.10.2004 on the file of Delhi High Court, reported in MANU/DE/0846/2004.***

5. The learned counsel appearing for the respondent would submit that the respondent/private company is carrying on bank business and merely because the Reserve Bank of India has got control over the bank, it cannot be stated that each and every functioning of the respondent bank shall be termed as public duty. The learned counsel for the respondent further submits that the respondent bank cannot be termed as a State within the meaning of Article 12 of the Constitution of India and no public duty is attached in respect of the loan

transaction. Therefore, according to him, no writ petition will lie against the respondent. In support of his contention, he relied on the decision of the ***Hon'ble Supreme Court in Federal Bank Limited Vs. Sagar Thomas and others reported in (2003) 10 Supreme Court Cases 733.***

6. The averments made in the affidavit makes it clear that the petitioner's mother applied for loan by depositing title deeds. The said loan account was settled by the petitioner's mother. However, the respondent failed to hand over the title documents on the ground that there are loan amount due from the petitioner's mother in respect of other loan account. The obligation of the respondent bank to hand over the title documents is arising under the contract and it cannot be treated as a public duty. In the judgment relied on by the learned counsel petitioner, either nationalised bank or RBI or Union of India were arrayed as one of the parties. However, in the present writ petition, only private bank is arrayed party. No other statutory authority is arrayed as one of the respondents.

7. In the decision of the ***Hon'ble Supreme Court in Federal***

Bank Limited Vs. Sagar Thomas and others reported in (2003) 10 Supreme Court Cases 733, while considering the maintainability of the writ petition against the private bank, the Apex Court has observed as follows.

> 33. For the discussion held above, in our view, a private company carrying on banking business as as scheduled bank, cannot be termed as an institution or a company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of pubic nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor put any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant bank. The respondent's service with the Bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent bank is not trying to enforce any statutory duty on the part of the Bank. That being the position, the appeal deserves to be allowed.

8. Here, the petitioner, by filing this writ petition seeks to enforce

only a contractual obligation against the respondent bank. The writ petition is not filed seeking enforcement of any public duty. Therefore, the writ petition filed against the respondent bank, which is a private bank is not maintainable. As far as the dispute with regard to the failure of the respondent to return the original document is concerned, the petitioner is entitled to approach the banking ombudsman and if any application is filed before the banking ombudsman, the same shall be considered and disposed of by the said authority, within a period of three months from the date of receipt of the application, after affording reasonable opportunity to the petitioner and the respondent bank.

9. With the above observations, this writ petition is dismissed. There shall be no order as to costs.

17.12.2024

Index:Yes
Internet:Yes.
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To

The General Manager,
Credit Risk Management,
HDFC Bank, Chennai 600 001.

S.SOUNTHAR, J.

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