BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.01.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.8113 of 2020
and
W.M.P.(MD)Nos.7529 and 7531 of 2020

Jeyam ... Petitioner

Vs.

1.Reserve Bank of India,
Rep. by its Regional Manager,
Fort Glacis,
No.16, Rajaji Salai,
Chennai – 600 001,
Tel: 044 – 2536 1631:
Fax: 0444 – 2536 5220.

2.CRIF High Mark Credit Information Service Private Limited,
FOFB-04, 05, 06, Fourth Floor,
Art Guild House,
Phoneix Market City,
CTS No.124/B, LBS Marg,
Kurla West, Mumbai – 400 070,
Maharashtra,
Telephone : 022 – 717172900,
E-mail: info@highmark.com.

3.M/s.Kaira Microcredit Private Limited,
Flat No.G-1, VIP Apartments,
Lake Area Main Road,
Melur Road, Uthangudi,
Madurai – 625 107. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the second Respondent (Advanced Overlap report for Jeyam-Highmark Credit Information Services), published in the web-site dated 27/06/2020, describing the Petitioner as "Delinquent", quash the same and further direct the second respondent to comply with the Notification dated 27/03/2020 issued by the first respondent.

For Petitioner : Mr.S.Ramesh

For Respondents : Mr.K.R.Laxman for R1.
Mr.V.Ramakrishnan for R3.
No appearance for R2.

ORDER

Heard the learned counsel for the writ petitioner, the learned standing counsel for the first respondent and the learned counsel for the third respondent. Though the second respondent was served and their name is also printed in the cause list, they have not chosen to enter appearance.

2.The petitioner challenges the impugned advanced overlap report issued by the second respondent wherein she has been described as delinquent. Such a description reflects on the petitioner's credit worthiness. The same is put to challenge in this writ petition. On 19.08.2020 in W.M.P.(MD)No.7531 of 2020 in W.P.(MD)No.8113 of 2020, I granted interim stay in the following terms:-

"When this writ petition came up for admission on 28.07.2020, this Court ordered notice to the respondents. Even though the Reserve Bank of India as well as the second respondent have been served, no counsel entered appearance on their behalf.

2.Third respondent M/s.Kaira Microcredit Private Limited has been served and they are represented by their Counsel Mr.V.Ramakrishnan.

3.Heard the learned Senior Counsel appearing for the writ petitioner and the learned counsel appearing for the third respondent.

4.The learned Senior Counsel appearing for the petitioner states that the petitioner had availed financial assistance from the third respondent. He would further submit that the petitioner was regularly clearing the loan liabilities till February 2020 and that on account of Covid-19 pandamic, she could not pay a balance amount to the third respondent herein. The learned counsel further submitted that the default on her part had been reported by the third respondent to the second respondent. The second respondent is the rating agency. The second respondent by the impugned Advanced Overlap Report, dated 27.06.2020 had described the petitioner as delinquent. The learned Senior Counsel would further point out that as a result of such *description conferred on the petitioner by the rating agency, she cannot avail financial assistance from other credit institutions. Therefore, she has chosen to challenge the same.*

5.The learned Counsel appearing for the third respondent submits that this writ petition has been inspired by Mahasemam Trust, Madurai with whom the third respondent is having a serious dispute. It is stated that proceedings are pending between them. Likewise, the learned counsel would further submit that the third respondent had given a factually correct report about the petitioner and that therefore, the impugned report of the second respondent cannot be faulted. He also seriously questioned the very maintainability of the writ petition.

6.I am of the view that all these issues require a detailed consideration and they can be fully adjudicated only in the final hearing. As of now, the second respondent whose report has been impugned has not chosen to appear before this Court.

7.It is seen that the Reserve Bank of India had issued a moratorium on 27.03.2020. The learned Senior Counsel would submit that the moratorium period of three months has been further extended till 31.08.2020. It is seen that the impugned report was issued on 18.06.2020. My attention is drawn to the decision of the Hon'ble Delhi High Court made in W.P (C) Urgent 5 of 2020 (Anant Raj Limited Vs.Yes Bank Limited) reported in 2020 SCC Online Del 543, wherein paragraph Nos.16, 20 and 29 read as follows:

> *"16.Learned counsel for the petitioner has also relied on Frequently Asked Questions (FAQs) issued by the Ministry of Finance and uploaded by Press Information*

Bureau particularly to question No.8. Question No.8 reads as under:

> *"QUESTION 8: What will be the impact of this relief by RBI on borrowers as far as reporting of default is concerned?*
>
> *ANSWER:Any delay in payment leads to default and gets reported to Credit Bureaus. For business loans of Rs.5 Crores and above, the banks report the overdue position to RBI also through CRILC. As a result of this relief package, the overdue payments post 1 st March 2020 will not be reported to Credit Bureaus/CRILC for three months. No penal interest or charges will be payable to the banks. Similarly, SEBI has allowed that Credit Rating Agencies (CRAs) may not consider the delay as default by listed companies if the same is owing to lockdown conditions arising due to COVID -19"*

20.Reading of the statement on Development and Regulatory Policies issued by RBI on 27th March, 2020 along with Regulatory Package issued on March 27, 2020 prima facie shows that the intention of the RBI is to maintain status quo as on 01.03.2020 with regard to all the instalments payment for which had to be made post 01.03.2020 till 31.05.2020.

29.Prima facie, I am of the view that the classification of the account of the petitioner as an NPA on 31.03.2020 could not have been done by the respondent. Accordingly, status quo ante is restored qua the classification of the account of the petitioner and the account classification as it stood on 01.03.2020 shall stand restored."

8.In this case, the object of the Reserve Bank of India is to ensure that the status quo that prevailed on 01.03.2020 should be maintained till the moratorium period expires. As of now, the moratorium is very much in force. I am therefore prima facie of the view that the second respondent has acted contrary to the Reserve Bank of India directives. Therefore, respectfully following the decision *of the Hon'ble Delhi High Court, I am inclined to stay the impugned report of the second respondent. I make it clear that the second respondent shall not act contrary to the mandate of the Reserve Bank of India as set out in the moratorium announcement."*

3.When the matter was taken up for final hearing today., 09.01.2024, the learned counsel for the third respondent submits that the adverse entry as regards the petitioner had already been deleted. One is not quite sure when the deletion took place. But the fact remains that interim order was in operation right from 19.08.2020 and the second respondent did not bother to move this Court for vacating the same. Since the report was stayed by this Court and subsequently, the adverse entry as regards the petitioner has also been deleted in the impugned advance overlap report, nothing survives for further adjudication in this writ petition.

4.This writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

09.01.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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