

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WRIT PETITION Nos. 5426, 21624,, 21584, 21623, 21631, 14370, 14386, 14387, 14367, 14383, 14356, 15630, 14376, 15818, 14378, 14393, 14362, 14369, 14355, 15633, 14381, 14372, 14363, 14374, 14391, 14354 & 14361 of 2024

Between:

Bhavani Vikram Joshi,

...PETITIONER

AND

Union Of India and Others

...RESPONDENT(S)

DATE OF JUDGMENT PRONOUNCED: 20.12.2024

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

- | | |
|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

VENKATESWARLU NIMMAGADDA, J

***HON'BLE SRI SRI JUSTICE VENKATESWARLU NIMMAGADDA**

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%20.12.2024

Bhavani Vikram Joshi

.. Petitioner

And

\$ Union Of India and Others.

.. Respondents

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>HEAD NOTE:

! Counsel for petitioner: Sri JADA SRAVAN KUMAR

Counsel for respondents: Ms. M UMA DEVI (CENTRAL GOVT COUNSEL
Sri P BADRINATH

? CASES REFERRED:

1. 2021 INSC 427=MANU/SC/0580/2021
2. 1997 (10) SCC 488
3. (2003) 10 SCC 733
4. (2022) 5 SCC 345
5. (2009) 1 CTC 22
6. MANU/GJ/2345/2022
7. 2019 (16) SCC 303
8. 2006 (63) ALR 591
9. AIR 2008 (NOC) 1207 (A.P) = 2009 AIHC (NOC) 74 (A.P)
10. MANU/TN/4532/2021

APHC010101112024



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3329]

FRIDAY ,THE TWENTIETH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

**WRIT PETITION Nos. 5426, 21624,, 21584, 21623, 21631, 14370, 14386,
14387, 14367, 14383, 14356, 15630, 14376, 15818, 14378, 14393, 14362,
14369, 14355, 15633, 14381, 14372, 14363, 14374, 14391, 14354 & 14361
of 2024**

Between:

Bhavani Vikram Joshi,

...PETITIONER

AND

Union Of India and Others

...RESPONDENT(S)

Counsel for the Petitioner:

1.JADA SRAVAN KUMAR

Counsel for the Respondent(S):

1.M UMA DEVI (CENTRAL GOVT COUNSEL)

2.P BADRINATH

The Court made the following:

COMMON ORDER:-

The instant Writ Petitions are filed under Article 226 of the
Constitution of India by the Petitioners for following relief:

“..to issue an appropriate writ order or direction particularly one in the nature of writ of Mandamus declaring the action of the respondents Nos. 2 to 4 in deducting the Pre-EMIs (Equated Monthly Installments) from the housing loan account of the petitioner herein vide Account No.LBVJW00003232001 despite there is a clear violation of Master Circular of Reserve Bank of India guideline No.7.6 vide its No. DCBR.BPD (PCB). MC No.9/09.22.010/2015, DATED 01.07.2015 and without observing fact that the builder / respondent No.5 has committed default either in completing the construction or making payment to the respondent banker is as illegal, arbitrary and violation of Fundamental Rights of the petitioner guaranteed under Articles 14, 15, 21 and 300A of the Indian Constitution and consequently direct the respondents No. 2 to 4 not to deduct the future EMIs in respect of the loan account LBVJW00003232001 without proceedings for recovery from the respondent No.5 and pass”

2. Since the relief claimed in all the Writ Petitions and party Respondents are one and the same, this Court inclined to decide the issue by way of this Common Order.

3. The facts in W.P.No.5426/2024 are taken to render this Common Order.

(a) The case of the Petitioner herein is that the Petitioner availed sanctioned loan amount of Rs.71,83,902/- for purchase of a flat No.4151 in a housing project namely “Ramakrishna Venuzulla” constructions by Ramakrishna Housing Constructions Limited. Out of which an amount of Rs.51,09,902/- already disbursed on 19.12.2016. The schedule of repayment by way of equal monthly instalments of the subject housing loan is 180 months. The Petitioner also entered an agreement of sale dated 29.11.2016 and also entered a tripartite agreement between the Petitioner, 5th Respondent developer and respondent bank.

(b) The further case of the Petitioner herein is that the respondent bank contrary to the Master Circular dated 01.07.2015, issued by the Reserve Bank of India disbursed the loan amounts without observing the stages of the construction and burdened the Petitioner. As per Circular Clause-3 deals with quantum of loan wherein Clause-(f) reiterates that Banks are advised that disbursement of housing loans sanctioned to individuals should be closely linked to the stages of construction of the housing project / houses and upfront disbursement of amounts should not be made in cases of incomplete / under construction / green field housing project.

(c) Even though the Clause is clear and specific in the present case, the respondent banks disbursed 70% of the loan, in fact the construction becomes standstill since 2019 and deducting EMIs from the Petitioner / borrower's accounts which is contrary to the terms of the Master Circular as well as the conditions of the tripartite agreement. As per guideline No.7(6) of the Circular dated 01.07.2015 without observing the fact that the 5th respondent builder had committed default either in building construction or in making payments even after receipt of representation the Respondents 2 to 4 not initiated any steps against the 5th Respondent as contemplated.

(d) As per the tripartite agreement if the possession of the residential flat could not be delivered within the time stipulated by the developer, it would be the responsibility of the developer to pay the EMI in favour of the

Bank on behalf of the borrower till handing over the possession of the residential unit / flat to the Petitioner / Purchaser. But in the present case the respondent banks not initiated any steps against the 5th respondent but deducting the EMIs from the account of the Petitioner even though the construction of the residential flats stalled in mid-way. As such, handing over of the possession of the Flat / Unit to the Petitioner does not arise.

(e) It is further case of the Petitioner that all similarly situated buyers / purchasers of the flats at subject project were formed an association and issued a common notice on 20.12.2021 calling upon the 5th Respondent as well as Respondent Bank to return the entire amounts received from them by way of installments so far along with interest @ 24% and also Rs.5 Crores towards damages. For which the 3rd respondent bank issued reply notice denying the claim of the association and also stated that as per the tripartite agreement entered by the Petitioner with the developer and Banks, the Petitioner is entitled to initiate appropriate action as per the terms of the agreement.

(f) The Petitioner and similarly situated persons also approached National Consumer Commission vide CC.Nos.119, 121, 128 of 2022 for refund of total principle amount paid by them and the same are pending for consideration. Therefore, the inaction on the part of the Respondents 2 to 4 in recovering EMIs amounts from the 5th Respondent as per the terms of the

agreement who is in default in handing over the possession who agreed for payment of installments to the banks is assailed in the present Writ Petition.

4. The 3rd Respondent herein filed counter affidavit as well as vacate stay petition in the present Writ Petition and also in batch of Writ Petitions contending thus:

(a) The Respondent Bank is a private company incorporated and constituted under the Companies Act, 1956 and as Banking Company as defined in Section 5 of the Banking Regulation Act, 1949. The Respondent Bank does not perform any sovereign functions, nor does it exercise any authority over a third person. The nature of the activity conducted by Respondent Bank is that of a commercial undertaking which receives deposits from individuals, advances loans and undertakes other ancillary monetary transactions for profits. Respondent Bank is merely a private limited company carrying out the business of banking as a scheduled bank. It is neither a State nor its agency or instrumentality. Furthermore, it is not carrying out any statutory or public duty, as envisaged under Article 12 of the Constitution of India. Therefore, Respondent Bank cannot be considered a State and is consequently not amenable to the writ jurisdiction of this Hon'ble Court.

(b) The deduction of Pre-EMIs is in line with the Facility Agreement, Tripartite agreement, and an Undertaking entered into by the petitioner with the answering respondent on 13.12.2016. The RBI circular that has been referred to is not applicable in the present case and to the answering respondent, as the circular is only applicable to Urban Co-operative banks- ICICI Bank is a scheduled commercial bank. Furthermore, as per clause 2.3 of the Facility Agreement, the petitioner has consented to not hold answering respondent responsible for any delay in the construction/giving possession of the property by the developer/builder. Therefore, petitioner cannot claim that the answering respondent cannot deduct pre-EMIs just because the builder has not completed the construction/handed over the possession. As per Clause 2- Undertaking dated 13.12.16, the Petitioner undertook to unconditionally pay EMIs in case the developer stops the payment of EMIs to ICICI Bank. Further, Clause 3 of Undertaking dated 13.12.16- the Petitioner undertook to pay the entire facility/due amount, irrespective of whether the Petitioner has been given the possession of residential unit, flat or house.

(c) This Hon'ble Court should note that the Facility Agreement between the Petitioner and the Bank clearly records that the Bank is not responsible for any delay in construction / handing over possession of the

Project. The categorical representation given by the Complainant in Clause 2.3 is reproduced below:

"The Borrower/s shall not hold the Lender responsible for any delay in the construction/giving possession of / completion of the Property (ies) by the developer/promoter/builder/society to the Borrower/s, or for quality, condition or fitness of construction of the Property (ies) even if the Lender may have approved / sanctioned any facilities to such developer / promoter / builder/ Development Authority or given to Borrower's any information about such promoter/property/builder/Development Authority."

(d) It is further submitted that as per Clause 2- Undertaking, the Petitioner undertook to unconditionally pay EMIs in case the developer stops the payment of EMIs to the answering respondent. As per Clause 3- Undertaking, the petitioner undertook to pay the entire facility/due amount, irrespective of whether the Petitioner has been given the possession. The answering Respondent cannot be held responsible for the inordinate delay at the end of the developer and the same was agreed by the petitioner / borrower under the Facility Agreement (Clause 2.3)

(e) The allegations that answering respondent deviated from the guidelines of RBI and other authorities are denied in toto. The Petitioner has made baseless allegations without any evidence, and they are put to strict proof of the same. The answering respondent has followed all the guidelines and done their due diligence prior to disbursing the amount. The amount was disbursed post assessing the stages of construction and the petitioner/customer has requested the bank to release the funds in favor of

the builder and the same can be verifiable to disbursement request forms. The Petitioner/borrower has undertaken the legal obligation to pay back the money that is due to the answering respondent in case the developer stops paying the EMIs. The obligation of the Petitioner/borrower to pay back the money to the answering respondent is unconditional and independent and does not depend on the possession handover or if the developer stops the payment of EMIs. The inability of the developer to handover the possession cannot be attributed to the answering respondent and the Petitioner cannot be absolved of his legal obligation to pay back the loan amount to the answering respondent. The answering respondent's right to recover the money from the Petitioner / borrower as per the mutually agreed terms and conditions of the transaction documents cannot be termed as coercive.

5. Learned counsel for the Petitioner submits that the Respondent Nos.2 to 4 not adhered to guideline No. 7.6 of Master Circular dated 01.07.2015 wherein it is clearly and categorically observed that the disbursing of the housing loan sanctioned to individuals should be closely linked to the stages of construction of the housing project / houses and upfront disbursal should not be made in cases of incomplete / under-construction / green field housing projects.

6. While so, departing from the mandatory clause of the guideline of the Master Circular of the 2nd Respondent, the Respondents 3 and 4 banks herein without adhering to the guidelines even though the subject property is incomplete or under-construction even after lapse of period of completion as per the tripartite agreement / facility agreement is contrary to the said guidelines / clause.

7. The Master Circular of the 2nd Respondent which is purely meant for housing finance to all the scheduled and commercial banks, more particularly Respondents 3 and 4 herein. Clause-3 reiterating the contents as stated above. As such, the guidelines mentioned in the subject Circular are mandatory in nature in the event of default in applying the said clause Respondents 2 and 3 are not entitled to recover the EMIs from the Petitioner. For which Petitioner relied upon the judgment rendered by the Delhi High Court in W.P (C) No.6774 of 2021 titled as ***Hridesh Kumar Pathak v. Bank of Maharashtra*** and W.P (C) No.10759 of 2021 being ***Jayanta Kumar Mishra and another v. Union of India***, wherein the Division Bench has, by way of interim orders, restrained the banks/HFCs from taking coercive steps against the petitioners/home buyers.

8. Learned counsel for the Petitioner further reliance is placed on a recent decision of the Apex Court in ***Supertech Ltd vs Emerald Court***

Owner Resident Welfare¹ wherein, after noticing the plight of the homebuyers, the Court has directed the developer to refund the entire amount with interest.

9. He further submits that in the similar set of facts the Hon'ble Delhi High Court in **Ashish Tiwari vs. Union Bank of India** has dealt the issue of deduction of pre-EMIs and has directed the respondent bank authorities not to take any coercive steps against the petitioner therein.

10. Therefore, learned Counsel for the Petitioner finally submits that the Respondents 2 to 4 are not entitled to recover any amount from the Petitioner hereinafter and they shall recover the amounts from the 5th Respondent who committed default in completion of the project and not handed over the possession of the respective flats. Therefore, the Writ Petition is liable to be allowed.

11. Learned Standing Counsel for Respondent No.2 Sri S. Satyanarayana Murthy and Sri P. Badrinath, learned Counsel for Respondent Nos.3 and 4 submits that the present Writ Petition ought to have dismissed in *limini* with exemplary costs and the reliefs sought herein are arisen out of private and contractual disputes entered between the Petitioner, 5th Respondent and Banks herein. Irrespective of pay of the

¹ 2021 INSC 427=MANU/SC/0580/2021

Petitioner the adjudication of terms of the contract among the parties cannot be subjected to extraordinary jurisdiction under Article 226 of the Constitution of India. Guideline No.7.6 of Circular dated 01.07.2015 is meant primarily for Urban Cooperative Banks but not scheduled commercial banks but the Circular dated 01.07.2015 which meant for scheduled banks is applicable to the Respondent Nos.2 and 3 herein. Clauses in Circular dated 01.07.2015 are in directory in nature but not mandatory. As such, the same cannot be enforceable under extraordinary jurisdiction under Article 226 of the Constitution of India.

12. It is settled proposition of law that non-compliance with an RBI Circular does not result in invalidation of underlying contract as held in **Bank of India Finance Ltd. V. Custodian**² wherein it is held that even if the Petitioner can successfully demonstrate that disbursement was in violation of applicable RBI Circulars, that will not affect the underlying Facility Agreement. As defaulting borrowers, the Petitioners do not have any *locus standi* to challenge the *vires* of the Facility Agreement.

13. It is well settled proposition of law that a writ jurisdiction cannot be invoked against private bodies much less in respect of contractual disputes between the parties as held by Hon'ble Apex Court in catena of judgments.

² 1997 (10) SCC 488

He relied upon the following judgments rendered by the Hon'ble Apex Court as well as this Court:

- (1) **Federal Bank Ltd. Vs. Sagar Thomas**³
- (2) **Phoenix ARC Private Ltd. V. Vishwa Bharati Vidya Mandir**⁴
- (3) **ICICI Bank Ltd. V. Lakshminarayanan**⁵
- (4) **Universal Hospital A1 AIN LLC v. Yes Bank Ltd.**,⁶
- (5) **Ramakrishna mission v. Kago Kunya**⁷
- (6) **Anil Kumar Rastogi v. State of U.P**⁸

14. Learned Standing Counsel for Respondent No.2 submits that Clause 2.3 of Facility Agreement entered between the Petitioner and 3rd Respondent Bank clearly demonstrates that the bank is not responsible for any delay in the construction / giving possession of / completion of the properties by the developer / promoter / builder / society to the borrower/s or for quality, condition or fitness of construction of the property even if the lending bank may have approved / sanctioned any facilities to such developer. Therefore, the Respondent Nos.2 and 3 cannot be made liable for the default committed by the 5th respondent. As per the undertaking executed by the Petitioner on 24.10.2016 in favour of the bank indicates that in case of a non-payment or untimely payment of monies by the developer within the referred period, the borrower / petitioner agrees and undertakes to pay the said monies on its behalf promptly without any protest or demur, as and when requested by the Bank. The Petitioner also undertakes to repay

³ (2003) 10 SCC 733

⁴ (2022) 5 SCC 345

⁵ (2009) 1 CTC 22

⁶ MANU/GJ/2345/2022

⁷ 2019 (16) SCC 303

⁸ 2006 (63) ALR 591

the facility loan / loan sanctioned as per the agreed terms and conditions irrespective of possession of the property handed over by the developer.

15. Therefore, the Petitioner cannot canvas that the Respondent No.2 not monitored the Circulars effectively against the Respondent Nos.3 and 4 having agreed for the payment of EMIs even in the case of default on the part of the developer. The relief claimed by the Petitioner in the present Writ Petitions are born out of private and contractual disputes among them i.e., the Petitioner, 5th Respondent and Respondent Nos.2 and 3 banks. As such, the contractual obligations / disputes cannot be enforced by way of extraordinary jurisdiction under Article 226 of the Constitution of India. The Circulars issued by the 2nd Respondent are only guiding factor to the banks while formulating their lending policy but it cannot be strictly made applicable for every factual circumstances. More over the Circulars are directory in nature but not mandatory as claimed by the Petitioner. To adjudicate these disputes and contractual obligations arising out of the contracts and undertakings, the 2nd Respondent formulated a comprehensive scheme i.e., Integrated Ombudsman Scheme, 2021. Therefore, the Petitioners are entitled to invoke the jurisdiction on the subject scheme. In fact the Petitioners herein are already approached National Consumer Commission, Delhi against the 5th Respondent and

others for refund of the total principle amount paid by them and the same are pending for consideration.

16. Therefore, having invoked the alternative jurisdiction for refund of the amount, the Petitioners cannot be permitted to file present Writ Petition parallelly by twisting some other relief for the same cause of action arising out of the same contract. Therefore, the Writ Petition is liable to be rejected in view of settled rule laid down by this Hon'ble Court in **Meeran Minerals v. Central Bank of India**⁹. He also relied upon the judgment of Madras High Court in **Marg Limited v. Karaikal Port Private Ltd**¹⁰. Therefore, in view of ratio ruled by this Court as well as Madras High Court the Writ Petition is liable to be dismissed.

17. Heard Ms. Krishna Deepthi, learned counsel representing Sri Jada Sravan Kumar, learned counsel for the Petitioners, Sri S. Satyanarayana Murthy, learned Standing Counsel for Respondent No.2 and Sri P. Badrinath, learned counsel for Respondents 3 and 4. There is no representation for Respondent No.5.

18. On perusal of the material placed on record, it appears that the relief claimed by the Petitioner is born out of the Facility Agreement entered between the Petitioner and Respondents and later undertakings and loan

⁹ AIR 2008 (NOC) 1207 (A.P) = 2009 AIHC (NOC) 74 (A.P)

¹⁰ MANU/TN/4532/2021

agreements. All these agreements are contractual in nature binding between them. The whole contentions raised by the Petitioner either born out of agreement or out of Circular dated 01.07.2015. The guideline / clause of 7.6 of Circular dated 01.07.2015 relied by the Petitioner is meant for rural / urban cooperative banks but not commercial banks but another Circular which was with same terms issued to the scheduled banks which is applicable to the Respondents 2 and 3 herein. Except canvassing by the Petitioner that Clause 3(f) of the Circular dated 01.07.2015 was not adhered by the Respondents 2 and 3 and disbursed the loan contrary to the Circular and therefore the said inaction on the part of the Respondents 2 and 3 cannot be permitted to recover EMIs from the Petitioners is contrary to the terms of the Facility Agreement as well as indemnified undertakings executed by the Petitioner.

19. More over, the subject Circular dated 01.07.2015 is only a guiding factor for respective banks to make a policy or to observe the care and caution while lending towards housing projects. Therefore, the entire terms of the Circular are directory in nature therefore in the event of violation is not amenable to the extraordinary jurisdiction under Article 226 of the Constitution of India. In fact, the Petitioner herein agreed in all terms for payment of EMIs and also even in the case of default on the part of 5th

Respondent by duly executing Facility Agreement as well as undertakings as substantiated by the learned counsel for Respondent banks.

20. As contended by both learned Standing Counsel, the relief claimed by the Petitioner in the present Writ Petitions which is purely a private and contractual dispute among them (between petitioner and respondents) is not amenable to the extraordinary jurisdiction under Article 226 of the Constitution of India is liable to be accepted and sustainable in view of the ratio ruled by Hon'ble Apex Court as extracted below:

(a) In **Federal Bank Ltd's case** (Supra 3) Hon'ble Apex Court held

thus:

“33. For the discussion held above, in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or 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 public 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 of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor puts 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. 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 is not trying to enforce any statutory duty on the part of the Bank. That being the position, the appeal deserves to be allowed.

(b) In **Phoenix ARC Private Ltd's case** (Supra 4) Hon'ble Apex Court

held thus:

“18. Even otherwise, it is required to be noted that a writ petition against the private financial institution – ARC – appellant herein under Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the SARFAESI Act can be said to be not maintainable. In the present case, the ARC proposed to take action/actions under the SARFAESI Act to recover the borrowed amount as a secured creditor. The ARC as such cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities. If proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the SARFAESI Act and no writ petition would lie and/or is maintainable and/or entertainable. Therefore, decisions of this Court in the cases of Praga Tools Corporation (supra) and Ramesh Ahluwalia (supra) relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers.”

(c) In **ICICI Bank Ltd’s** case (Supra 5) the Madras High Court held as

follows:

“17. In the present case also, as the appellant-Bank of Madura Ltd., is a private Company, carrying on private banking business and not carrying on any statutory or public duty, no "Writ Petition" under Article 226 of the Constitution of India is maintainable against the appellant-Bank of Madura Ltd. Merely because the Bank has made provisions to grant "pension" on VRS, under the relevant Pension Scheme, the same cannot be a ground to hold that the Bank is performing a public duty or public function. Hence, the first question is answered in the negative against the respondent-Writ Petitioner and in favour of the appellant-Bank of Madura Ltd. (now ICICI Bank Ltd.)”

(d) In **Meeran Minerals’s** case (Supra 9), this Court observed as

under:

“2. The Writ Petition is filed for a Writ of Mandamus declaring the impugned letter dated 3.3.2006 issued by the 1st respondent bank to the petitioners as violation of Mandatory Guidelines under OTS 2005 of the 2nd respondent illegal, discriminatory, indiscrete and contrary to Sections 21 and 35 A of the Banking Regulation Act, 1949 and also violation of fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India and consequently directing the 1st respondent bank to receive amount under

OTS 2005 Scheme from the petitioners for full and final settlement of their dues and pass such other suitable orders.

8. In the counter affidavit filed by the 2nd respondent, Reserve Bank of India, a preliminary objection had been raised that the Writ Petition itself is not maintainable. It is averred that the Reserve Bank of India (the bank), a body corporate constituted by Section 3 of the Reserve Bank of India Act 1934 to regulate the issue of Bank notes and keeping of the reserves with a view to securing monetary stability in India and to operate the currency and credit system of the country to its advantage. The Bank is the sole note issuing authority. Bank notes issued by the Bank are legal tender under Sections 22 and 39 of the Reserve Bank of India Act. The Bank regulates and controls the money in the country. The Bank also acts as statutory banker to the Government of India and all State Governments and also manages their public debts. The Bank regulates and supervises commercial banks and cooperative banks in the country. The Bank exercises various powers and discharge various statutory functions under Foreign Exchange Management Act, 1999, Banking Regulation Act, 1949, Reserve Bank of India Act, 1934 etc. Further it is averred that the Bank issued guidelines dated 3rd September 2005 in exercise of the powers conferred under Section 36 of the Banking Regulation Act, 1949 to public sector banks at the request of Government of India. It is also stated that the public sector banks are governed by statutes constituting them like State Bank of India Act, 1955, State Bank of India (Subsidiary Banks) Act, 1959, Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980. Board of Directors of public Sector Banks is appointed by Central Government in consultation with Reserve Bank. Public Sector banks constitute a different and distinct class by themselves. In terms of Section 18 of State Bank of India Act, 1955 and Section 8 of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980, its subsidiary banks and other nationalized banks are governed by the directions issued by the Central Government in consultation with Governor, Reserve Bank of India. The Government of India, Ministry of Finance prepared a policy packet for stepping up credit to small and medium enterprises (SMEs) and placed the same before the Parliament on 10th August, 2005. The Government forwarded the policy paper vide letter dated 11th August, 2005 to Reserve Bank of India and other public sector banks requesting therein to take all necessary steps to follow the policy in letter and spirit. The policy paper in paragraph 5 provided inter alia, as under:

One time settlement scheme to apply to small scale NPAs account in the books of the bank as on March 31, 2004 will be introduced. The scheme will be in force up to March 31, 2006.

A copy of the letter dated 11th August, 2005 of Ministry of Finance is enclosed to the Counter Affidavit. As requested by the Government of India, the Reserve Bank vide letter RPCD PLNF.BC No. 31/06.02.31/20 dated 19th August, 2005 issued the policy package for stepping up credit to SMEs to Chairman/Managing Director of all public sector banks. As the policy was

placed by the Government before the Parliament and was addressed to public sector bank, the same was considered for issuance to public sector banks. One time settlement scheme was formulated by the Reserve Bank on the basis of statement made by the Finance Minister before the Parliament on 10th August, 2005 in the policy paper submitted for stepping up credit to SMEs and the Reserve Bank issued guidelines on one time settlement scheme for SME account vide RPCD.PLNFS.BC. No. 39/06.02.31/2005-06 dated 3rd September, 2005. Para 4 of the said guideline specifically provide that any deviation from the above settlement guidelines for any borrower shall be made only by the Board of Directors. These guidelines have not been issued under Section 35A of the Banking Regulation Act, 1949, therefore, they are directory in nature and each bank has to apply its decision in individual cases. The respondent No. 2 relied on the decisions of the Supreme Court in Joseph Kuruvilla Vellukunnel v. Reserve Bank of India, which is popularly known as Palai Central Bank case. In paragraph 45 of the Judgment, the Supreme Court has observed, inter alia, as under:

In view of the history of the establishment of the Reserve Bank as a Central Bank of India, its position as a banker's bank, its control over banking companies and banking in India, its position as the issuing bank, its power to license banking companies and cancel their licenses and the numerous other powers, it is unanswerable that between the Court and the Reserve Bank, the momentous decision to wind up a tottering or unsafe banking company in the interest of the depositors, may reasonably be left to the Reserve Bank. No doubt, the Court can also, given the time, perform this task. But the decision has to be taken without delay, and the Reserve Bank already knows intimately the affairs of banking companies and has had access to their books and accounts. If the Court were called upon to take immediate action, it would almost always be guided by the opinion of the Reserve Bank. It would be impossible for the Court to reach a conclusion unguided by the Reserve Bank if immediate action was demanded. But the law which gives the same position to the opinion of the Reserve Bank is challenged as unreasonable. In our opinion, such a challenge has no force. In Corporation Bank v. D.S. Gouda the Supreme Court in paras 16 and 21 of the Judgment has observed as under:

16. As pointed out earlier, under the Banking Regulation Act, wide powers are conferred on the Reserve Bank to enable it to exercise effective control over all banks. Sections 21 and 35A enable it to issue directives in public interest to regulate the charging of interest on loans or advances made from time to time. It is in exercise of this power that it issued the Circulars referred to earlier fixing the rates of interest to be charged from borrowers. The Corporation Bank was nationalized with effect from 11.7.1980. Since the suit in question was filed in 1978 it was governed by the said guidelines which prescribed a minimum rate of 12.5% per annum. Any bank which committed a breach of the directives was liable to be penalized under Section 47-A. A bank could ignore the directive on pain of being penalized. Therefore, before issuing guidelines or directives the Reserve Bank must be taken to have given serious thought to the nature of directives to be issued.

21. It was further contended that the rates of interest prescribed by the Reserve Bank take into consideration the true financial and economic policy of the country and operate as benchmarks against which private lending parties are supposed to adjust and compare their own rates of interest and, therefore, the Court should ordinarily show reluctance to interfere in such matters as it may have the effect of disturbing the economic policy meticulously framed and implemented in the country. We find considerable substance in this line of reasoning, particularly where the minima and the maxima are prescribed by the Reserve Bank. In *Peerless General Finance and Investment Co. Ltd., and Anr. v. Reserve Bank of India*, has observed as under:

Reserve Bank of India which is banker's bank is a creature of statute. It has large contingent of expert advice relating to the matters affecting the economy of entire country and nobody can doubt the bona fides of the Reserve Bank, in issuing the impugned directions of 1987. The Reserve Bank plays an important role in the economy and financial affairs of India and one of its important functions is to regulate banking system in the country.

The Supreme Court has further observed:

Courts are not to interfere with economic policy, which is the function of experts. It is not the function of the Courts to sit in judgment over the matters of economic policies and it must necessarily be left to the expert bodies.

In *B.O.I. Finance Ltd. v. Custodian* the Supreme Court has observed in paragraphs 25 to 27 as under:

Section 21 of the Banking Regulation Act, and Sub-section (2) in particular, entitles the Reserve Bank of India to give directions to the banking companies with regard to the matters specified in the said section. Sub-section (3) provides that every banking company shall be bound to comply with any directions given to it under the said Section. Section 35-A(1) also contains the power of the Reserve Bank of India to give directions and the same reads as under:

35-A(1) Where the Reserve Bank is satisfied that –

- (a) in the public interest; or (aa) in the interest of banking policy; or
- (b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or
- (c) to secure the proper management of any banking company generally; it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking

company, as the case may be, shall be bound to comply with such directions;

There can obviously be no doubt, as is evident from the plain reading of the said provisions that the directions issued under Sections 21 and 35-A are binding on the banking companies. Section 36(1)(a) and 1(b), on which reliance is placed, reads thus:

36(1) The Reserve Bank may –

- (a) caution or prohibit banking companies generally or any banking company in particular against entering into any particular transaction or class of transactions and generally give advice to any banking company;
- (b) on a request by the companies concerned and subject to the provisions of (Section 44-A) assist as intermediary or otherwise, in proposals for the amalgamation of such banking companies.

Referring to Section 36(1)(a), we find that it empowers the Reserve Bank to 'caution or prohibit' the banking companies from entering into any particular type of transaction or generally to give advice to the said banking companies. This provision not only enables the Reserve Bank to assume an advisory role but it also gives it the power to prohibit a banking company against entering into any particular transaction/s or class of transactions. The use of the words 'caution or prohibit' in Section 36(1)(a) clearly implies that when the Reserve Bank of India prohibits the banking companies from entering into any particular transaction, then such a direction which is issued would be binding on the banks and has to be complied with. While the Reserve Bank of India has the power under Section 36(1)(a) of the Act to give advice or to caution the banking companies which may not be binding on the banking companies, but when the Reserve Bank prohibits the banking companies against their entering into any particular transaction or class of transactions, the said prohibition has to be regarded as being binding. The power to prohibit, given by Section 36, will be meaningless if it was not meant to be binding on the banking companies.

In *E. Sathyanarayana v. R.B.I. (Karn)* (2002) 112 Company Cases 272, while considering the guidelines issued by Reserve Bank of India on 27 May, 1999 for constitution of Settlement Advisory Committees and guidelines for settlement of debts due to nationalized banks, the Karnataka High Court on page 276 observed as under:

Section 21 of the Act referred to above contemplates that if the RBI is satisfied that it is necessary or expedient for it in public interest or in the interest of depositors or banking policy to it and to determine the policy in relation to the advance of loans to the persons to be followed by the banking companies as the case may be shall be bound to follow the policy to be determined. By perusing the guidelines mentioned in the circular issued by the Chief General Manager of RBI, it is not mentioned as to whether the RBI is satisfied and found that it is expedient in public interest or in the interest of depositors or in the interest of the banking policy to accept the said

guidelines issued by the Chief General Manager. By reading the entire document of the circular produced by the petitioners and the so called guidelines purported to have been issued by the RBI it is clear that the petitioners have not shown that the said guidelines have been issued by the RBI as defined under the Reserve Bank of India Act of 1934, except contending that the Chief General Manager of RBI, who is the competent authority under the provisions of the Act has issued the circular. Even in the said circular, it is not disclosed that the same has been issued by him either in the interest of the public or the depositors or the banking policy. In this view of the matter, this Court has to record a finding and hold that the guidelines contained in the circular referred to above upon which much relevance is placed upon by the petitioners counsel placing reliance upon the judgments of the Apex Court, this Court and Andhra Pradesh High Court are not the guidelines issued in terms of Section 21 of Banking Regulation Act, 1949.

The Court has further observed as under-

Apart from the said undisputed facts, there is no existing legal right accrued in favour of the petitioners to demand the respondent nationalized banks in these petitions to enforce the guidelines against them upon which they are relying and there is no corresponding statutory obligation to be performed by the respondent banks. On the other hand, the petitioners/debtors are bound by the loan agreement entered into with the respective nationalized banks to enforce the same against the petitioners/debtors as per the terms and conditions of the loan agreements.

In *Mono Caps (India) v. State Bank of India and Ors.* (2004) 122 Company Cases 517, the Delhi High Court has observed as under:

The question whether guidelines would apply to cases where decrees have been passed, had been considered by the High Court of Bombay, in Writ Petition No. 973 of 2003 titled *Chemosyn Ltd. v. Union Bank of India*. The Reserve Bank of India clarified the position with regard to the guidelines: These guidelines do not cover the cases where decrees have already been passed. The objective of the RBI guidelines is to provide a fast track channel of recovery of NPAs. Whereas in the case of decreed debts, the banks can straightaway execute the same and recover their dues. In the case of decreed debts the question of compromise/settlement does not arise". This approach has a rationale inasmuch as the cases in which decrees have been obtained, the bank can straightaway execute the same and recover the dues. It would therefore be seen that the circulars are directory in nature and do not have the status of guidelines issued in terms of Section 21 of the Banking Regulation Act, 1949.

In *Sardar Prem Singh v. Bank of Baroda*, decided on 24.2.2004, 2004(3) CCC 205, the Division Bench of Allahabad High Court has observed in paras 4 and 5 as under:

4. Granting one time settlement is really re-scheduling of the loan, and only the bank can do that. This Court under Article 226 of the Constitution cannot direct for one time settlement. The Court can only interfere when there is violation of law, but no such violation has been pointed out.

5. Learned Counsel for the petitioner has referred to the guidelines of the Reserve Bank of India for recovery of non-performing assets mentioned in the letter of respondent No. 1, dated 24.8.2000 (Annexure 1 to the petition). In our opinion these guidelines are only for the internal guidance of the Banks and the Financial Institutions, but a party who has taken the loan cannot derive any benefit from these guidelines, and these guidelines of the Reserve Bank of India do not confer any right on a party which has taken the loan to get one time settlement. These guidelines are purely executive instructions and not statutory directions. Hence no right can be claimed by any one on their basis.

It is also averred that the averments made in the affidavit filed in support of the Writ Petition are not true and correct and specifically denied the averments made therein and several further averments had been made in paragraphs 20 to 30 and in the light of the specific stand taken, the dismissal of the Writ Petition had been prayed for.

12. In the light of the specific stand taken by the 2nd respondent in the counter affidavit as well, there cannot be any doubt whatsoever that these guidelines specified supra are not enforceable in a Court of law and a Writ of Mandamus or suitable directions on the strength of which cannot be issued.

14. Further strong reliance had been placed on the decision of the Madras High Court in Tamil Nadu Industrial Investment Corporation Ltd. v. Millenium Business Solutions Pvt. Ltd. and Anr. 2005-1-L.W.58 (DB) wherein the Division Bench after referring to decisions in Calcutta Gas Co. v. State of West Bengal ; Bihar Eastern Gangetic Fishermen Co-operative Society Ltd., v. Sipahi Singh ; Lekhraj Satramdas Lalvani v. Deputy Custodian-cum-Managing Officer ; Dr. Rai Shivendra Bahadur v. The Governing Body of the Nalanda College ; Dr. Umakant Saran v. State of Bihar ; M/s. M.M.Accessories, Jogi Ram Puri Road, Naziabad and Anr. v. M/s. U.P. Financial Corporation, Kanpur and Anr. (2002) 46 Allahabad Law Reporter 261 ; Rama Muthuramalingam v. Deputy Superintendent of Police, Tiruvarur District and Ors. ; Haryana Financial Corporation and Anr. v. Jagdamba Oil Mills and Anr. ; Mahesh Chandra v. Regional Manager, UPFC ; Gajraj Jain v. State of Bihar and Ors. and Chairman and Managing Director, SIPCOT, Madras and Ors. v. Contromix Pvt. Ltd., and Anr. observed as under:

In our considered opinion it is not proper for the Court to interfere in such matters relating to recovery of loans. Such matters are contractual in nature and writ jurisdiction is not the proper remedy for this. A writ lies when there is an error of law apparent on the face of the record, or there is violation of law. No writ lies merely for directing one time settlement or for directing rescheduling of the loan or for fixing instalments in connection with the loan.

It is only the bank or the financial institution which granted the loan which can re-schedule it or fix one time settlement or grant instalments. The Court has no right under Article 226 of the Constitution to direct grant of one time settlement or for re-scheduling of the loan, or to fix instalments. No doubt Article 226 on its plain language states that a writ can be used by the High Court for enforcing a fundamental right or for 'any other purpose'. However, by judicial interpretation the words 'any other purpose' have been interpreted to mean the enforcement of any legal right or performance of any legal duty. In the present case, the writ petitioner has really prayed for a mandamus to the Corporation to grant it a one time settlement, but no violation of any law has been pointed out. In our opinion, no such mandamus can be issued in this case, and hence the writ petition should not have been entertained. A mandamus is issued only when the petitioner can show that he has a legal right to the performance of a public duty by the party against whom the mandamus is sought.

The Court should exercise judicial restraint and not interfere with the matters which do not pertain to its proper domain. A loan is granted in terms of the contract, and grant of one time settlement or re-scheduling of the loan amount is really a modification of the contract, which can only be done by mutual consent of the parties, vide Section 62 of the Contract Act, 1872. The Court cannot alter the terms of the contract.

Before parting with the case we would like to mention that recovery of tens of thousands of crore rupees of loans of banks and financial institutions has been held by up Court orders under Article 226 proceedings which were really warranted. However, much sympathy a Court may have for a party, a writ Court must exercise its jurisdiction on well settled principles, and not on mere sympathy or compassion. No doubt, there may be hardship to a party, but unless violation of law is shown, the Court cannot interfere. Holding up recoveries of loans by unwarranted Court orders is causing incalculable harm to our economy, since unless the loan is recovered a fresh loan cannot be granted to needy persons.

15. In the light of the views expressed by the learned Judge of the Madras High Court, where similar question arose for consideration and also the view expressed by the learned Division Bench of the Madras High Court and also in the light of the several decisions which had been referred to even in the counter affidavit of the 2nd respondent and the specific stand taken by the 2nd respondent-Reserve Bank of India, coupled with the stand taken by the 1st respondent in this regard, this Court is thoroughly satisfied that these guidelines are not enforceable guidelines in a Court of law and no Writ of Mandamus can lie to enforce such guidelines.”

(e) In **Marg Limited's** case (Supra 9) the Madras High Court observed

thus:

“66. In exercise of writ jurisdiction, this Court would certainly not get involved in the commercial disputes entirely arising from the private relationship driven by commercial consideration and issue any command as that would amount to injudicious intrusion and invasive transgression into the defined areas of conflict governed by mutual rights, liabilities and obligations. If the doors of public law are to be thrown open for matters like the present one, it would only lead to opening the pandora's box and all the private disputes would find a back door entry and have recourse to writ jurisdiction as a easier option for serving private ends. Such scenario would eventually lead to dilution of the essence of the writ jurisdiction namely, serving public interest.”

21. It is further observed that the Petitioner already approached National Consumer Commission, New Delhi for refund of the entire principle amount paid by him which is also pending for consideration. More over the Petitioner also can avail the alternative remedy before the Integrated Ombudsman which is an effective alternative remedy as per the scheme envisaged by the 2nd Respondent in the year 2021 U/s 35A of the Banking Regulation Act, 1949 also Section 45L of the Reserve Bank of India Act, 1934.

22. In view of the principle laid down by the Hon'ble Apex Court as well as this Hon'ble Court and Petitioner also invoked alternative remedy before the National Consumer Commission which is pending and relief claimed by the Petitioner is purely born out of private and contractual disputes which is not amenable to the jurisdiction of this Court, the present Writ Petition is liable to be rejected granting liberty to the Petitioner to approach an effective another alternative remedy as per the Integrated Ombudsman Scheme, 2021 formulated by the 2nd Respondent, before the Hon'ble Bank's Ombudsman.

23. In view of foregoing discussion, the Writ Petitions are hereby dismissed as not maintainable. However the Petitioners are at liberty to invoke alternative jurisdiction as stated above. No costs.

As a sequel, interlocutory applications if any pending in these Writ Petitions, shall stand closed.

JUSTICE VENKATESWARLU NIMMAGADDA

Date:20.12.2024
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THE HONOURABLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

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NOTE: LR copy to be marked

Date :20.12.2024

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