

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.19456 of 2017

and

W.M.P.Nos.20981 & 24303 of 2017

S.Manoharan
Sole Proprietor of M/s.Murugan Idli Shop,
No.4A Jamals Vani Mahal,
Lady Madhavan Street,
Mahalingapuram,
Chennai – 600 034.

...Petitioner

Vs.

1.Reserve Bank of India,
Rep.by its Manager,
Mumbai.

2.The IDBI Bank Ltd., IDBI Tower,
Rep.by its Executive Director,
WTC Complex,
Cuffee Parade, Colaba,
Mumbai – 400 005.

3.The Branch Manager,
IDBI Bank Ltd., T.Nagar Branch,
'Devi Arihant' New No.24/2, Old No.16,
Dr.Nair Road, T.Nagar, Chennai – 600 017.

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the communication of the 3rd respondent dated 25.4.2017, quash the same and consequentially forbear the 2nd and 3rd respondent from insisting payment of foreclosure penalty.

For Petitioner : Mr.Niranjan Rajagopalan
For M/s.G.R.Associates

For R1 : Mr.C.Mohan
For M/s.King & Partridge

For R2 & R3 : Mr.P.Elaya Rajkumar
For M/s.Ramalingam and Associates

ORDER

The writ on hand has been instituted, questioning the validity of the communication of the third respondent dated 25.04.2017.

2. The writ petitioner states that he is the sole Proprietor of M/s.Murugan Idli Shop. The writ petitioner is a businessman and running a business in the name and style of “Murugan Idli Shop”, which is sole proprietary concern. The petitioner is assessed to tax. The third respondent/Bank had sanctioned two term loan accounts with a limit of

Rs.10 Crore by taking over the outstanding loan of the petitioner with Fullerton India Credit Company Limited. The term loan agreement dated 06.03.2014 was signed by the petitioner in his capacity as the sole proprietor of "Murugan Idli Shop". In April 2017, there was an outstanding of Rs.8,25,55,000/-. The petitioner approached the third respondent / IDBI Bank with the proposal to shift his Banking to HDFC Bank. As per which, the HDFC Bank would take over the outstanding loan of the petitioner. The third respondent / IDBI Bank sought to levy foreclosure penalty at 2% of the OD Limit, plus service tax and on the outstanding term loan amount amounting to Rs.21,33,365/-.

3. Relying on the Reserve Bank of India (RBI) Circular, the petitioner made a request on 06.04.2017, seeking waiver of foreclosure charges. However, the third respondent / IDBI Bank declined to accept the request, which resulted institution of the present writ petition.

4. The learned counsel for the writ petitioner mainly contended that the petitioner is an individual and the Sole Proprietor of M/s.Murugan Idli Shop, which is a brand name. Therefore, he is falling under the category of

an “individual borrower” within the meaning of the RBI circular and thus, entitled to avail the benefit of waiver of foreclosure charges. The learned counsel for the petitioner further states that he has given consent to recover the foreclosure charges with a hope that the documents deposited will be released without prejudice to the writ petition pending during the relevant point of time. However, it was not initially released and pursuant to the interim order granted by this Court, documents were released subsequently.

5. May that as it be. The 1st respondent / Reserve Bank of India filed a counter affidavit, stating that the circular dated 7th May 2014 issued by the Reserve Bank of India, it was advised *inter-alia* that '*banks will not be permitted to charge foreclosure charges/pre-payment penalties on all floating rate term loans sanctioned to **“individual borrowers”**, with immediate effect*'. Reserve Bank of India vide circular dated August 2, 2019, clarified that '*banks shall not charge foreclosure charges / pre-payment penalties on any floating rate term loan sanctioned, for purposes other than business, to **“individual borrowers”** with or without co-obligant(s)*'. This circular has, however, no retrospective effect.

6. The learned counsel appearing on behalf of the 1st respondent / Reserve Bank of India reiterated that the waiver of foreclosure charges are applicable only to the “individual borrowers” and in the present case, the borrower is “M/s.Murugan Idli Shop”, represented by its sole proprietor and therefore, entity cannot be construed as an “individual borrower” within the meaning of the circular issued by the Reserve Bank of India, more so, the proprietary concern of the petitioner is falling under the category of Small Medium Enterprise (SME) and therefore, in any event, the writ petitioner cannot be construed as an “individual borrower” and therefore, not eligible to avail the benefits of waiver of foreclosure charges.

7. The learned counsel appearing on behalf of the respondents 2 and 3 drew the attention of this Court with reference to the loan documents signed by the parties. The loan document signed by the writ petitioner prescribes the terms and conditions. Regarding pre-payment, the agreed conditions reads as under:

“As per extant guidelines of the Bank at the time of prepayment. However, in the event of takeover of the limits by other Banks/FIs, penalty 2% shall be payable.”

8. General terms and conditions also stipulates that “*foreclosure penalty of 2% on the limit will be charged, if taken over by other Banks/FIs*”. Foreclosure charges for OD also states as follows:

“As per extant guidelines of the Bank at the time of foreclosure. Presently it is “Nil”, if it is closed out of town funds. However in the event of takeover of the limits by other Banks/FIs, penalty of 2% of the limit shall be payable. Any such takeover of the OD limit shall be subject to 3 weeks prior written notice from the borrower and extant guidelines of the bank.”

9. Relying on the terms and conditions stipulated in the loan document, the learned counsel for the respondents 2 and 3 / IDBI Bank, contended that the petitioner having acted contrary to the terms and conditions of the sanction, started claiming that the loan accounts stand closed and the securities are to be released. The petitioner upon making the payment of the dues through HDFC by taking over of the existing credit limits, instead of paying the foreclosure penalty levied by the respondents 2 and 3 / IDBI Bank to the tune of Rs.21,33,365/- has started sending communication/representation for waiver of the foreclosure penalty levied by the IDBI Bank.

10. It is contended that the petitioner has agreed the terms and conditions in the loan document. While so, he cannot turn around and claim waiver of the foreclosure charges.

11. The Reserve Bank of India Circular dated 5th June 2012 states that *“it has been decided that Banks will not be permitted to charge foreclosure charges / pre-payment penalties on home loans on floating interest rate basis, with immediate effect”*.

12. However, the said circular has not been relied upon by the petitioner. The second circular dated 7th May 2014 issued by the Reserve Bank of India, indicates that *“it was advised, inter alia, that Banks will not be permitted to charge foreclosure charges / pre-payment penalties on all floating rate term loans sanctioned to “individual borrowers”, with immediate effect.”* The said circular was modified through circular dated 2nd August 2019, wherein the Reserve Bank of India clarified that *“Banks shall not charge foreclosure charges/pre-payment penalties on any floating rate term loan sanctioned, for purposes other than business, to individual borrowers with or without co-obligant(s)”*.

13. The subsequent clarification of the year 2019 is the continuation of the first circular dated 7th May 2014.

14. The learned counsel for the writ petitioner states that the 2019 circular cannot be given retrospective effect and it is rightly so, even as per the circular. Perusal of the circular reveals that foreclosure charges/pre-payment penalties need not be recovered from the “individual borrowers”. However, the term “individual borrowers” cannot be applied to the firms or companies etc., and more so in the present case, admittedly, the petitioner is falling under the Small Medium Enterprises (SME) and therefore, cannot be construed as an “individual borrower”. Even the loan document signed by the petitioner would reveal that it was signed for “M/s.Murugan Idli Shop” by its Proprietor.

15. Though the writ petition is filed by one Mr.S.Manoharan, Sole Proprietor of “M/s.Murugan Idli Shop”, in the loan document he has signed for “M/s.Murugan Idli Shop” as its Proprietor. Thus, “Murugan Idli Shop” being a brand name and the loan borrowed for running the business by

Mr.S.Manoharan, who filed the writ petition as Sole Proprietor of “M/s.Murugan Idli Shop” cannot be considered as an “individual borrower” within the meaning of the circular issued by the Reserve Bank of India on May 07, 2014.

16. Regarding the subsequent circular dated 2nd August 2019, it clarifies that the co-obligant(s), who jointly borrowed loan, also can be considered as an “individual borrower” for the purpose of grant of waiver of foreclosure charges. However, the said circular cannot have any implication in respect of the sole proprietary concern of the petitioner i.e., “M/s.Murugan Idli Shop”.

17. If at all the definition of “individual borrowers” within the meaning of the circular is to be expanded, it is to be considered only by the Reserve Bank of India within the provisions of the Statute and certainly, the High Court cannot expand the scope of the definition of the “individual borrowers”, so as to grant waiver of foreclosure charges / pre-payment penalties, which is otherwise agreed upon to be paid by the petitioner by signing the loan document.

18. In the present case, in the loan document, the petitioner has affixed the seal of “M/s.Murugan Idli Shop”and signed as its Proprietor. The loan was sanctioned in the name of the proprietary concern, which being the legal entity, the petitioner would not fall under the category of “individual borrower” as per the Reserve Bank of India Circular of the year 2014. If at all any other dispute exists between the parties regarding the terms and conditions of the loan, it is for the petitioner to raise it before the appropriate Forum.

19. With this liberty, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

08.03.2023

Index : Yes
Speaking order
Neutral Citation: Yes
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To

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Reserve Bank of India,
Mumbai.

2.The Executive Director,
The IDBI Bank Ltd., IDBI Tower,
WTC Complex,
Cuffee Parade, Colaba,
Mumbai – 400 005.

3.The Branch Manager,
IDBI Bank Ltd., T.Nagar Branch,
'Devi Arihant' New No.24/2, Old No.16,
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