



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD)No.1070 of 2018

and

W.M.P.(MD)No.1116 of 2018

J.Prabakaran

: Petitioner

Vs.

- 1.Small Industries Development Bank of India (SIDBI),
Rep.by its Chairman cum Managing Director,
SIDBI Head Office, SIDBI Tower,
15, Ashok Marg, Lucknow-226 001, Uttar Pradesh.
- 2.The General Manager,
Audit & Fraud Management Cell,
Small Industries Development Bank of India (SIDBI),
SIDBI Head Office, SIDBI Tower,
15, Ashok Marg, Lucknow-226 001, Uttar Pradesh.
- 3.The General Manager,
Regional Head,
Small Industries Development Bank of India (SIDBI),
No.72, May Flower, E Castle I Floor,
Dr.Balasundaram Road, Coimbatore-600 018.
- 4.The Assistant General Manager,
Small Industries Development Bank of India (SIDBI),
MADITSSIA Auditorium, Ground Floor,
No.1A-4A, Dr.Ambedkar Road, Madurai-625 020.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the second respondent in SIDBI HO No.2018JAN04/L00083622/A&FMC, dated 04.01.2018, deciding to forward the petitioner's name to IBA for inclusion in the Caution List and quash the same.

For Petitioner : Mr.R.Subramanian
For Respondents : Mr.J.Alaguram Jothi

ORDER

By the impugned order dated 04.01.2018, a decision has been taken to forward the petitioner's name to the Indian Bank Association (Indian Bank of India) for inclusion in the Caution List. Challenging the same, the present Writ Petition has been filed.



2. Heard the learned counsel on either side.

3. The learned counsel appearing for the petitioner submitted that the petitioner herein is a Panel Advocate for several Nationalized Banks as well as Private Banks, including the first respondent Bank, for the past more than ten years. When the petitioner rendered title investigation reports on 15.11.2013, 12.12.2013 & 10.01.2015, the first respondent herein had raised some queries with regard to the opinion rendered in the aforesaid reports in connection with the lands comprised in S.No.166/1B and T.S.No.1615 in Tirunelveli, stating that while the property in Survey No.166/1B was locked, the property in Survey No.1615 did not have an access road, which was physically contrary. When the first respondent had issued a show cause notice, dated 10.05.2016, the petitioner herein had given a detailed reply on 09.06.2016 justifying the opinion rendered by him. However, by relying upon the guidelines issued by the Reserve Bank of India, the impugned order came to be passed.

4. It is submitted by the learned counsel for the petitioner that the opinion for both properties were given after due scrutiny of the title documents of the subject properties and after field verification was done. He further submitted that the guidelines of the Reserve Bank of India does not contemplate the present impugned action for the alleged access obtained by the respondent herein. He further submitted that when a criminal complaint came to be presented by the first respondent, the petitioner was neither shown as accused in the First Information Report nor in the Charge Sheet. In the absence of any involvement in the criminal offence, there is no infirmity in the legal opinion rendered by him. Hence, he sought for allowing the Writ Petition.

5. The learned counsel appearing for the respondent submitted that the sanction of the loans based on the aforesaid legal opinion turned into non-permitting assets and action has been initiated under the SARFAESI Act. When the respondents had sought for valuation of the properties, it was found that both the properties were land locked and there was no approach road to the property. The Revenue documents relied upon by the petitioner were also bogus. According to the standing counsel, in view of the false particulars rendered in the reports, the Bank had faced financial loss and in view of the Reserve Bank of India guidelines, it was appropriate to include the petitioner's name in the caution list. Therefore, he sought for dismissal of the Writ Petition.

6. I have given careful consideration to the submissions made by the learned counsel on either side. A coercive decision to include the petitioner's name in the caution list is based on the guidelines issued by the Reserve Bank of India. I have perused the said guidelines produced before this Court. As per the guidelines, the penal measures provided therein for action against the Panel Advocates is prescribed in Clause 8.12.4, reads as hereunder:



"In addition to above borrower-fraudsters, third parties such as builders, warehouse/cold storage owners, motor vehicle/tractor dealers, travel agents, etc. and professionals such as architects, valuers, chartered accountants, advocates, etc. are also to be held accountable if they have played a vital role in credit sanction/disbursement or facilitated the perpetration of frauds. Banks are advised to report to Indian Banks Association (IBA) the details of such third parties involved in frauds."

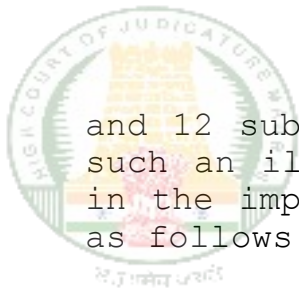
7.As per the above Clause, it is well founded that when the Panel Advocate plays a vital role in the credit sanction/disbursement or had facilitated the perpetration of frauds penal action can be initiated against him.

8.It is not the case of the respondent that the petitioner herein had played a vital role to facilitate the perpetration of such fraudulent act. The petitioner herein had rendered his legal opinion based on the title documents and other revenue documents produced before him. It is not the duty of the Panel Advocate to verify as to whether documents before him are forged or manipulated. It is not also the case of the respondents that the petitioner herein had involved himself in preparing bogus documents or otherwise facilitated the perpetration of a fraudulent activity.

9.Though the legal opinion is an important document for the purpose of credit sanction/disbursement of loans, any fraudulent act played by the third party to mislead the Panel Advocate cannot be deemed to be a fraudulent act.

10.In the instant case, when criminal complaint came to be registered in FIR No.RC.9/E/2016-CBI/EOW/Chennai, dated 28.12.2016, the petitioner herein was not shown as an accused. Subsequently, when the complaint was investigated and charge sheet came to be laid, the petitioner was not shown as an accused. Apparently, there was not an iota of criminal involvement by the petitioner herein.

11.When the show cause notice was given to the petitioner by the fourth respondent, he had sent a detailed reply dated 09.06.2016 deposing that he had acted only on the basis of documents furnished to him and that there was no infirmity or illegality in his work of giving legal opinion. However, when the impugned order came to be passed by the second respondent on 04.01.2018, there is absolutely no discussion with regard to the explanation rendered by the petitioner herein. Consequently, it can be only be construed as a non-speaking order and arbitrary action initiated against the petitioner.



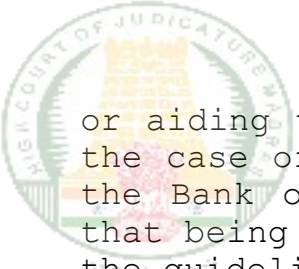
and 12 submitted that the act of the petitioner will not amount to such an illegality, which do not warrant penal action as indicated in the impugned order. The relevant portion of the order is reads as follows:

"..... The above particulars show that the respondent herein, as a panel advocate, verified the documents supplied by the Bank and rendered his opinion. It also shows that he was furnished with xerox copies of the documents and very few original documents as well as the xerox copies of death certificate, legal heirship certificate, encumbrance certificate for his perusal and opinion. It is his definite claim that he perused those documents and only after that he rendered his opinion. He also advised the Bank to obtain encumbrance certificate for the period from 21-4.2003 till date. It is pointed out that in the same way, he furnished legal scrutiny reports in respect of other cases also.

22. We have already mentioned that it is an admitted case of the prosecution that his name was not mentioned in the FIR. Only in the charge-sheet, the respondent has been shown as Accused 6 stating that he submitted false legal opinion to the Bank in respect of the housing loans in the capacity of panel advocate and did not point out actual ownership of the properties in question.

...27. In the banking sector in particular, rendering legal opinion for granting of loans has become an important component of an advocate's work. In the law of negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skills. A lawyer does not tell his client that he shall win the case in all circumstances. Likewise, a physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be given by implication is that he is possessed of the requisite skill with reasonable competence. This is what the person approaching the professional can expect. Judged by this standard, a professional may be held liable for negligence on one of the two findings viz., either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess."

13. As observed by the Hon'ble Apex Court (cited supra), the liability against the petitioner arise only when he was in active participation in defrauding the Bank. However, in the present case, there is no record to show that the petitioner was either abetting



or aiding the real culprits. As a matter of fact, it is also not the case of the respondent / Bank that the petitioner had defrauded the Bank or joined with the culprits to defraud the Bank. While that being so, the impugned order as such is unwarranted and against the guidelines of the Reserve Bank of India.

14. In the result, the impugned order dated 04.01.2018 is quashed. Accordingly, the Writ Petition is allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-II)

+1CC to Mr.R.Subramanian, Advocate, SR.No.76104

W.P. (MD) No.1070 of 2018
31.07.2018

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