

Case :- WRIT - C No. - 18999 of 2020

Petitioner :- Kailashi Devi

Respondent :- Branch Manager And Another

Counsel for Petitioner :- Manoj Kumar Mishra

Hon'ble Naheed Ara Moonis,J.

Hon'ble Vivek Varma,J.

Heard Sri Manoj Kumar Mishra, learned counsel for the petitioner and Sri Abhinav Gaur, learned counsel for respondents.

The instant writ petition has been filed seeking following relief:

"(a) a writ, order or direction in the nature of mandamus commanding the respondent bank to consider and decide the representation dated 1.9.2020 of the petitioner (Annexure No. 3 to this writ petition) by reasoned and speaking order within stipulated period as fixed by this Hon'ble Court;

(b) a writ, order or direction in the nature of mandamus commanding the respondent bank to accept the balance loan amount in accordance with the circular issued by the Reserve Bank of India due to Covid-19 and extend due date of installment for 6 months exempting interest for this period and not to adopt any coercive action against the petitioner.

(c) any other suitable writ, order or direction, which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

(d) award costs of the writ petition to the petitioner throughout."

At the outset learned counsel for the respondent bank has raised a preliminary objection that the present writ petition is not maintainable as H.D.F.C. Bank is a private bank not covered within the meaning 'State' under Article 12 of the Constitution of India.

Admittedly the petitioner has taken a commercial loan from the private bank and has defaulted in payment of instalments.

In the case of Federal Bank Ltd. v. Sagar Thomas and others, (2003) 10 SCC 733 : AIR 2003 SC 4325, the Hon'ble Supreme Court has held as under:

"28. ...As indicated earlier, share capital of the appellant bank is not held at all by the Government nor is any financial assistance provided by the State, nothing to say which may meet almost the entire

expenditure of the company. The third factor is also not answered since the appellant bank does not enjoy any monopoly status nor can it be said to be an institution having State protection. So far as control over the affairs of the appellant bank is concerned, they are managed by the Board of Directors elected by its shareholders. No governmental agency or officer is connected with the affairs of the appellant bank nor is anyone of them a member of the Board of Directors. In the normal functioning of the private banking company there is no participation or interference of the State or its authorities. The statutes have been framed regulating the financial and commercial activities so that fiscal equilibrium may be kept maintained and not get disturbed by the malfunctioning of such companies or institutions involved in the business of banking. These are regulatory measures for the purposes of maintaining a healthy economic atmosphere in the country.

29. Any business or commercial activity, may be banking, manufacturing units or related to any other kind of business generating resources, employment, production and resulting in circulation of money are no doubt, such which do have impact on the economy of the country in general. But such activities cannot be classified as one falling in the category of discharging duties or functions of a public nature. Thus the case does not fall in the fifth category of cases enumerated in the case of *Ajay Hasia* [*Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722]. Again we find that the activity which is carried on by the appellant is not one which may have been earlier carried on by the Government and transferred to the appellant company."

Following the law laid down by the Hon'ble Supreme Court in the above decision that the private financial institutions, carrying of business or commercial activity, may be performing public duties, but cannot be considered to be covered under the definition of "State" under Article 12 of the Constitution of India, the writ petition against such entity is not maintainable before the High Court.

Hence, in view of the settled principle of law the present writ petition is not maintainable. That apart, since disputed question of facts are involved, we decline to exercise our extraordinary jurisdiction under Article 226 of the Constitution of India on this ground also. Accordingly, the writ petition is hereby dismissed.

Order Date :- 26.11.2020

Shahnawaz