(2017) 03 MP CK 0120

In the Madhya Pradesh High Court

Case No : 11223 of 2011

Deshraj Singh APPELLANT

Vs

The State of M.P. RESPONDENT

Date of Decision : 06-03-2017

Acts Referred:

Constitution of India, Article 226 - Power of High Courts to Issue certain writs

Citation : (2017) 03 MP CK 0120

Hon'ble Judges : Ms.Vandana Kasrekar

Bench : Single Bench

Advocate : Manikant Sharma, Ashish Shroti

Judgement

1. The petitioner has filed the present petition praying for a direction to the respondents to take further action in response to the construction carried out by him and further to consider his request in accordance with the modification being sought as per the recommendation of the Reserve Bank of India. He had also challenged the notice dated 20.06.2011 thereby he has been asked to regularize loan account by depositing the over due amount.

2. The State Bank of India, Main Branch, Piparia, District Hoshangabad has published an advertisement calling upon the offers for providing building/plot for establishment of Branch of the Bank. The petitioner owes a plot submitted offer for providing his plot for constructing the building for Branch of the Bank. The bank has duly accepted the offer and directed the petitioner to carry out the construction work immediately. Earlier, a godown was constructed on the plot which was offered by the petitioner, therefore, for the construction of the building for the branch, the petitioner demolish the said godown and carrying the construction work as per the map given by the bank. For construction of the said building, the bank sanctioned a term loan to the petitioner under the rent plus scheme of the bank and under the said scheme, the loan so financed was to be recovered from the rent of the building. As directed by the bank, the petitioner

substantially carried out the construction work of the building. As the bank did not provide the design of the strong room as per standards of Reserve Bank of India, the petitioner requested the bank to allow him to complete the construction so that he may come over with the losses. The bank did not pay any heed to the request of the petitioner. The petitioner has, therefore, submitted number of representations to the bank for supply of specification for the construction of ''AA'' Type Currency Chest and further to enhance the construction cost as well as rent of the building in accordance with the modifications required by the bank.

3. The respondent No. 3 vide letter dated 11.11.2009 has provided the several specifications for the construction of ''AA'' Type Currency Chest. The petitioner, thereafter, approached to the bank for modification of the conditions of the rent plus agreement. The bank did not consider the request of the petitioner nor took any further action towards the construction of the building. The petitioner, therefore, approached to the Chairman of the Bank by way of several communications. As per the rent plus scheme the bank has issued a term loan of Rs. 20,00,000/- to the petitioner and the petitioner has availed Rs. 8,00,000/- only. It has further been submitted that the bank on one hand has not taken any action in furtherance of the construction work of the building and on the other hand a notice has been issued for recovery of Rs. 5,64,120/-. Being aggrieved by this action of the respondents, the petitioner has filed the present petition.

4. Learned counsel appearing on behalf of the petitioner argues that the petitioner has given a loan under the rent plus scheme and, therefore, the petitioner has raised substantially construction of the building for the branch of the Bank. As per the agreement the instalments towards the loan were to be deducted from the rent. The petitioner immediately has started raising the construction. The bank applied for grant of sanction of ''B'' Category Currency Chest and after a period of two years the Reserve Bank of India sanctioned ''AA'' Category Currency Chest for which a huge amount is required to be invested. The petitioner from time to time has approached the respondents for taking steps towards the establishment of the branch office and further to pay some more amount to the petitioner to carry out the construction as per the letter issued by the Reserve Bank of India, but the respondent-bank has failed to provide details to the petitioner, therefore, the respondents could not ask the petitioner to deposit the loan amount and, thus, the demand notice issued by the respondent deserves to be set aside.

5. The respondents filed their reply and in the reply, the respondents have submitted that the advertisement was issued by the Branch Manager, State Bank of India, Pipariya Branch inviting applications for grant of plot/building for purposes of opening of the branch at Pipariya. The petitioner submitted his application and the said application was accepted by the bank and the petitioner was permitted to raise the construction on the basis of rent plus scheme under which the financial assistance is granted to the land owner for construction of the

building proposed to the leased out to the bank for opening the branch. Under the scheme, the rent of the building is appropriated towards the monthly instalments of the loan. However, the contract of loan has nothing to do with the contract of lease proposed to be entered into between the bank and the lessor. The petitioner applied for grant of loan under the rent plus scheme for an amount of Rs. 20,00,000/- vide his application dated 21.11.2007. The loan was sanctioned to him on 12.01.2008. Wherein, the petitioner has agreed to repay the loan amount in monthly instalments of Rs. 39,400/- which was to commence from October, 2008 i.e. after six months.

6. It has further been submitted that a bare perusal of the aforesaid loan documents makes it clear that repayment of loan amount was never the subject matter of fulfillment of contract of lease agreement proposed to be executed between the parties. The loan was sanctioned to the petitioner with the stipulation that the disbursement of loan would be in stages as per cost of the project and after ensuring contribution of the stipulated margin by the borrower. Pursuant to the sanction of the loan, a sum of Rs. 8,00,000/- was disbursed to the petitioner on 04.03.2008. He was required to under take the construction work immediately so that it could be completed within the stipulated moratorium period. However, the petitioner failed to initiate and complete the construction work accordingly. Even after a lapse of 3 1/2 years the petitioner did not pay a single instalment as a result of which the loan account has became irregular and a sum of Rs. 5,69,214/- was overdue in his account when the legal notice was issued to him. Thus, on the basis of this averments, learned counsel for the respondents submits that as the petitioner has failed to raise the construction within a stipulated period of time, the said recovery notice have been issued.

7. I have heard learned counsel for the parties and perused the record. From perusal of the record I found that this petition involves the disputed question of facts that who is responsible for the delay whether the petitioner has raised construction as per the requirements which cannot be gone into by exercising the powers given under the writ jurisdiction. The Hon''ble Apex Court in the case of Noble Resources Ltd. Vs. State of Orissa and Another, (2006) 10 SCC 236 in para 18 has held as under:- "It may, however, be true that where serious disputed questions of fact are raised requiring appreciation of evidence, and, thus, for determination thereof, examination of witnesses would be necessary; it may not be convenient to decide the dispute in a proceeding under Article 226 of the Constitution of India."

Thus, in view of the judgement passed by the Apex Court, I do not find any reason to entertain into the writ petition.

8. Accordingly, the writ petition stands dismissed.

