



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JULY, 2023

BEFORE

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

WRIT PETITION NO. 11203 OF 2023 (GM-RES)

BETWEEN:

1. M/S. LEGEND PROPERTY
OFFICE AT NO. 53 (OLD NO.32),
16TH MAIN ROAD, 4TH T BLOCK,
JAYANAGAR, BENGALURU-560 041,
REP BY ITS PARTNER,
SRI M MADHAVA NAIDU,
S/O LATE. SUBRAMANYAM NAIDU,
AGED ABOUT 56 YEARS.
2. SRI. M CHANDRASHEKAR
S/O LATE M MUKUNDA,
AGED ABOUT 44 YEARS,
R/AT NO. 119, 3RD CROSS, J P NAGAR,
4TH PHASE, DOLLARS COLONY,
BENGALURU-560 078.

...PETITIONERS

(BY SRI. K N PHANEENDRA., SENIOR COUNSEL A/W
MISS. LEELA P.,ADVOCATE)

AND:

1. THE CHIEF MANAGER
STATE BANK OF INDIA,
SME, JAYANAGARA BRANCH,
BENGALURU-560 041.
2. SMT. P SIVA PRIYA
W/O M CHANDRASHEKAR,
AGED ABOUT 42 YEARS,





R/AT VILLA NO.A-53, ALPINE ECO ROAD,
ZONASHA PARADISO, FERNS PARADISE,
DODDANEKKUNDI, BENGALURU-560 037.

...RESPONDENTS

(BY SRI. SANDEEP K., ADVOCATE FOR
SRI. JAI PRAKASH RAO.,ADVOCATE FOR R1;
SRI. Y R SADASHIVA REDDY., ADVOCATE FOR
SRI. RAHUL S REDDY., ADVOCATE FOR R2)

THIS WRIT PETITION FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASHING THE IMPUGNED ENDORSEMENT/NOTICE DATED 06.05.23, ISSUED BY THE 1ST RESPONDENT , A COPY OF WHICH IS ENCLOSED AS ANNEXURE-Q AND DIRECTION THE RESPONDENT NO. 1 TO RELEASE/DISBURSE THE LOAN AMOUNT AS PER THE TERMS OF THE LOAN AGREEMENT DATED 15.02.23, PRODUCED AT ANNEXURE-K TO SECURE THE ENDS OF JUSTICE.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN B GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

First Petitioner, a registered Partnership Firm and the Second Petitioner being one of its Partners have presented this petition in the writ jurisdiction of this court for laying a challenge to the endorsement/notice dated 06.05.2023 issued by the 1st respondent-bank at Annexure-Q on the 2nd respondent's letter dated 24.03.2023.

2. The impugned endorsement/notice reads as under:

*"The Partners
M/s Legend Property*



*Sharvanthi Plaza, No.53 (old No.32)
16th main road, 4th T Block Jayanagar,
Bangalore.*

Dear sir/Madam

*Sub: Complaint received from Mrs Sivapriya
W/o Sri M Chandra shekar.*

*Kindly take cognizance of our mail dated
24/03/2023, wherein we had informed you
regarding complaint received from Mrs
Sivapriya W/o Sri M Chandrashekar, that she
has been coercively and fraudulently removed
from the partnership Firm (Legend Property)
and has prayed before the Principle Judge,
Family Court, Bangalore vide OS No-379/2022
to declare the affidavit dated 31.08.2021
releasing her share in M/s Legend Property as
null and void. And has notified us vide her
letter dated 24/03/2023 to not to disburse the
loan.*

*In this regard legal opinion was sought by
us from empanelled advocate and out law
department, who have advised us to restrain
from disbursement of loan further until a
resolution is reached either amicably or through
a court order.*

*Thus we request you to take necessary
action to resolve the issue at earliest for
smooth operation of the project and loan
account."*

3. Learned counsel for the petitioner argues that the Firm was established vide registered Partnership Deed



dated 24.07.2010; after the retirement of 2nd respondent from the Firm, it has been reconstituted on 31.07.2021; to the vacancy of retiring partner, her husband i.e., the 2nd petitioner herein has been inducted; a loan of Rs.40 crore was sanctioned by the bank by taking the subject property by way of security; about a sum of Rs.3 crore plus has been released as well; at this stage on the complaint of 2nd respondent, the bank has stopped release of further amount by virtue of endorsement; it refers to pendency of a declaration suit filed by the 2nd respondent in O.S.No.379/2022, wherein other partners are not the defendants; the respondent bank being a nationalized entity is an instrumentality of the State and therefore its impugned action being unjust & arbitrary, is liable to be set at naught and a direction be issued for releasing the sanctioned loan.

4. The respondent-bank has filed the Statement of Objections resisting the Writ Petition. Learned Panel Counsel appearing for the respondent-bank and learned



Sr. Advocate representing the 2nd Respondent oppose the petition making submission in justification of the impugned endorsement/notice; they contend that: the 2nd petitioner has played fraud & fabrication on his spouse namely the 2nd respondent herein and thereby has obtained her retirement from the Firm; fraud vitiates anything & everything; in that connection the subject civil suit is pending; therefore the impugned action of the respondent bank cannot be faltered. Learned Panel counsel submits that the Writ Petition is not maintainable against his client, more particularly when the loan transaction is in the nature of a private contract; petitioners can avail the alternate remedy that is by approaching the Banking Ombudsman. So contending, they pray for the dismissal of Writ Petition.

5. Having heard the learned counsel for the parties and having perused the petition papers, this court is inclined to grant indulgence in the matter for the following reasons:



(a) The submission of learned Panel Counsel appearing for the respondent-bank as to availability of alternate remedy does not much impress the court. The fact matrix for adjudging this Writ Petition is substantiated from the pleadings of the parties and copies of the documents placed on record. In view of that, there is no reason for this court to deny remedy to the Petitioner-Firm. The second contention that, the decision to stop releasing of the sanctioned loan has administrative characteristics and therefore the same does not merit a deeper examination at the hands of the Writ Court, also cannot be countenanced. It hardly needs to be stated that such a decision of the bank cannot be termed as purely administrative in character, apparently civil consequences following therefrom. It cannot be denied that the respondent-bank is an instrumentality of the State and its business is governed by the statutory guidelines promulgated by the Reserve Bank of India. Even otherwise, after **A.K.KRAIPAK vs. U.O.I. AIR 1970 SC 150**, the thin difference between administrative



decisions on the one hand and quasi-judicial decisions on the other has lost its significance in the realm of Administrative Law. What the Court has to see is the legal injury and the admissibility of redressal thereto in law. Both are visible to the naked eye. A Writ Court cannot turn away an injured litigant by quoting some jurisprudential theories; it is there to do justice to the aggrieved, of course in accordance with law.

(b) The contention of the Panel Counsel that in matters pertaining to loan transaction, no Writ Petition lies under Articles 226 & 227 of the Constitution of India, is bit difficult to countenance and reasons for this are not far to seek: firstly, 1st Respondent is a Nationalized Bank whose transactions are largely governed by the Reserve Bank of India Guidelines which are animated by abundant public law elements and they have got statutory force. The field of banking business is occupied by several legislations and the Rules/Regulations promulgated thereunder; the Reserve Bank of India Act, 1934, the Banking Regulation



Act, 1949, The Recovery of Debts and Bankruptcy Act 1993, SARFAESI Act, 2002, are a few to name; the RBI is a watchdog of finance & economy of the nation, apart from being the prime banking institution of the country; it is conferred with the authority of issuing binding directions inter alia to the Public Sector Banks vide Central Bank of India V. Ravindra, 2002 (1) SCC 367 It is not a pure & simple case of a private loan. The loan is sanctioned to the Firm; part of the loan has been already released; acting on the loan sanction letter, the petitioner Firm has undertaken a huge construction project; if the sanction is abruptly rescinded that too on the complaint of a spouse of a partner, the same would not augur well in public law.

(c) The action of the bank is hit by *proper estoppel* enacted in Sec. 115 of Indian Evidence Act, 1872 since the Petitioner-Firm has acted upon the loan sanction letter and has altered its position to its detriment by undertaking the construction project in question; it also offends the doctrine of *promissory estoppel* in the light of **UNION OF**

**INDIA vs. INDO-AFGHAN AGENCIES LTD., AIR 1968**

SC 718. Mr.M.L.Tannan in his 'Banking Law & Practice in India' 28th Edition, Lexis Nexis at paragraph 12.13 writes as under:

"Where a party promises to give money and relying thereon the other party alters its position, the first party who made the promise cannot resile. Banks and financial institutions promising to lend moneys or sanctioning loans and the borrower investing in his project relying thereon will be hit by the principle of Promissory Estoppel".

As already mentioned above, the respondent-bank being an instrumentality of the State under Article 12 of the Constitution, even in matters like this, writ remedy can be granted to the aggrieved. This view gains support from a decision of the Apex Court in **ABL INTERNATIONAL LIMITED vs. EXPORT CREDIT GUARANTEE CORPORATION OF INDIA LIMITED, (2004) 3 SCC 553** and **GUJARAT STATE FINANCIAL CORPORATION vs. M/S. LOTUS HOTELS PVT. LTD., (1983) 3 SCC 379.**



(d) The first petitioner Firm was constituted in July 2010 by a registered instrument; it came to be reconstituted in July 2021; the 2nd respondent who is none other than the wife of 2nd petitioner having retired, to the vacancy occasioned thereby, her spouse is admitted to the Firm as a partner; of course, there is a civil suit pending as to the fraud & fabrication allegedly perpetrated by the 2nd petitioner on the 2nd respondent, is also true; however, it is nobody's case that all other partners were hand in glove with the 2nd petitioner in perpetrating the alleged fraud; other partners are miles away from the suit; obviously, no order of Temporary Injunction or the like, has been made against the Firm or against the bank, since they are not arrayed as defendants in the suit. That being the admitted position, the bank is not justified in stopping the release of sanctioned loan amount half way through, already a part thereof having been handed to the Firm for the ongoing construction project in question.



(e) The vehement submission of learned Sr. Adv. appearing for the 2nd respondent that fraud vitiates everything vide **S.P.CHANGALAVARAYYA NAIDU vs JAGANNATH, AIR 1994 SC 853**, is true, as a broad proposition of law since the days of Lord Edward Coke vide **DE GREY, C.J. IN REX vs. DUCHESS OF KINGSTON 2 SMITH LC 687 (1766)**; however when it comes to the realm of Law of Contract, fraud is one of the grounds for avoiding an otherwise binding agreement, at the option of defrauded party vide Sec.19 of the Indian Contract Act, 1872 and it does not *per se* make such an agreement *void ab initio*. Thus there is a subtle difference between the effect of fraud in Private Law action and that in Public Law decisions. When there is a matrix involving an admixture of Public Law elements and the Private Law elements, fraud as a ground, has its own limitations & parameters, as in the case at hand is. The issue as to fraud & fabrication as would touch the subject loan arrangement cannot be addressed in the absence of proper parties (if not necessary parties) namely, the Firm



& other partners; it is only the 2nd petitioner against whom the suit is structured *inter alia* on the said ground.

(f) The issues are yet to be framed and the trial of suit will take its own time, regard being had to mounting pendency of cases. The ground of fraud & fabrication needs to be established by cogent evidence; if a finding is recorded, it is *inter parte* and therefore will not bind the non-parties like the Firm and the bank. Thus, even if the suit succeeds, it cannot prejudice the interest of Petitioner-Firm as such; the Firm being the borrower, an abrupt stoppage of release of sanctioned loan, would jeopardize its interest, because of ongoing construction project that is founded on the loan arrangement in question. A banker who answers description of State under Article 12 of the Constitution cannot act like a private lender; its actions have to be animated with reason & justice, which factors are militantly absent in the impugned endorsement/notice. Therefore the same is liable to be invalidated. The bank could not have issued



the impugned endorsement/notice as against the Firm at large, at the instance of 2nd respondent.

In the above circumstances, this Writ Petition succeeds; a Writ of Certiorari issues quashing the impugned Endorsement/Notice. A Writ of Mandamus issues directing the 1st Respondent bank to act upon the Loan Sanction Arrangement to which the Petitioner-Firm is a party, forthwith. It is open to the bank to otherwise secure its interest by taking necessary documents from the side of petitioners.

The observations herein above made being confined to the disposal of Writ Petition, shall not cast their shadow on the proceedings in the pending O.S.No.379/2022; all contentions in the suit are kept open.

Costs made easy.

Sd/-
JUDGE

Snb/
List No.: 1 Sl No.: 67