

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.772/99.

Dated: 28.10.1999.

Miss P.S.Desai _____ Applicant.

Mr. A.I.Bhatkar _____ Advocate
_____ Applicant.

Versus

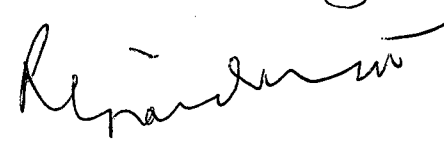
Union of India & Anr. _____ Respondent(s)

Mr.V.S.Masurkar _____ Advocate for
_____ Respondent(s)

CORAM :

Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to
other Benches of the Tribunal?
- (3) Library?


(R.G.VAIDYANATHA)
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.772/99.

Thursday, this the 28th day of October, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,

Miss. Pushpa Shreedhar Desai,
001 (B-11), Sagar Swami
Samarth Nagar, Andheri (W),
Mumbai - 400 054.
(By Advocate Mr.A.I.Bhatkar)

...Applicant.

Vs.

1. Union of India through
Chief General Manager Telecom
Stores, 3-A, Chowringhee Place,
Calcutta - 700 013.

2. The Controller of Telecom Stores
(Director), Fosbery Road,
Mumbai - 400 033.
(By Advocate Mr.V.S.Masurkar)

...Respondents.

: O R D E R (ORAL) :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

In this application, the applicant is challenging the impugned order dt. 10.12.1998 under which the respondents are demanding penal rent from the applicant at 14% p.a. The respondents have filed their reply opposing the application. Since the point involved is a short point, I am disposing of this application at the admission stage after hearing Mr.A.I.Bhatkar, learned counsel for the applicant and Mr.V.S.Masurkar, learned counsel for the respondents.

2. The applicant is working as a Section Supervisor in the office of the second respondent at Mumbai. She had applied for a

...2.



loan of Rs.75,000/- for purchasing a flat. The loan was sanctioned to the applicant of which Rs.51,750/- was paid as first instalment and Rs.25,750/- was paid as second instalment. It is also common ground that applicant has since paid the entire principal amount with interest. It appears, the Auditor has taken objection about this transaction. According to the audit note, the applicant had purchased the flat prior to the sanction of loan and therefore, sanction of loan for purchasing a flat is wrong and since the loan amount has not been utilised for the purpose for which the loan is taken, the applicant is liable to refund the amount together with penal interest at 4% p.a. That is how the impugned order dt. 10.12.1998 has been issued. Being aggrieved by the impugned order, the applicant has come up with the present application. According to the applicant, she had to pay certain advance amount when she applied for purchase of the flat and she had to pay some more amount to the Builder since there will be delay in sanction of loan and subsequently after taking the loan she has paid the money to her brother from whom she had raised temporary loan for payment to the Builder. It is therefore, the applicant's case that the amount has been utilised for the purpose for which it was taken viz. to purchase a flat in Apna Ghar Unit No.11 Co-operative Housing Society Ltd., Andheri built by Samarth Development Corporation (Builders and Contractors). Therefore, the applicant is challenging the legality and validity of the impugned order.

3. On the other hand, the respondents have reiterated the stand that the loan was applied for purchasing a flat, but the applicant had purchased the flat even before the sanction of loan

and hence the loan amount has not been utilised for the purpose for which the loan was sanctioned and therefore the audit objection is perfectly justified and consequently the demand of penal rent as per the impugned order is perfectly valid and according to law.

4. From the pleadings and the arguments addressed at the bar, the short point which falls for consideration is whether the applicant had utilised the loan amount for which it was sanctioned. If the answer is in the affirmative, then there is no dispute that the applicant is not liable to pay any penal interest. If the answer to the question is in the negative, then no doubt, the applicant will be liable to pay penal interest. But, there is some dispute about the rate of penal interest.

5. We can take judicial notice that in Mumbai there is a system of formation of Housing Societies and buildings containing large number of flats which are built by Builders and then transferred to a Registered Co-operative Housing Society. Therefore, every person who wants to purchase a flat has to necessarily enter into an agreement with the Builder and for purchase of on payment of certain advance amount. Then, during the progress of the construction of the building some more amount will have to be paid by the person who has booked the flat and ultimately, before taking possession the entire amount has to be paid. Now, in this case, the applicant had entered into an agreement with the Builder on 18.8.1986. Under that agreement, Rs.50,000/- was paid as an advance and the balance was to be paid subsequently. In the loan application given by the applicant which is at page 105 of the paper book and which is dt. 1.12.1986, it is clearly mentioned that Rs.50,000/- is already



paid as an advance and the balance amount to be paid is Rs.1,34,000/-. The name of the building is shown and the name of the builder is also shown. Therefore, this is not a case where the applicant had deliberately entered into some agreement in order to take the loan from the Government at a lesser rate of interest and she has tried to commit fraud on the government. On the other hand, in the loan application she has clearly mentioned that Samartha Development Corporation is the Builder and the name of the building with address is also furnished in Column No.9. Therefore, the applicant has applied for the House Building Advance in respect of the agreement she has already entered into with the builder for whom she has already paid Rs.50,000/- as advance and she has also shown the balance amount to be paid. It is well known that there will be lapse of time before the loan application is processed and ultimately the loan is sanctioned, the builder will not wait till the official gets the loan from the Government. Therefore, the person who has booked the flat has a duty to see that the amount is paid to the builder as per the terms of the agreement whether he or she gets the government loan or not. That is how we find that even before the sanction of loan the applicant has paid an amount of Rs.1,19,500/- to the builder on 6.1.1987 and a xerox copy of the receipt is produced at page 48 of the paper book. The applicant's case is that she raised a temporary loan from her brother in order to pay the amount to the builder and after getting the loan from the government she has repaid that loan amount to her brother. The question is whether in the circumstances can it be said that applicant had utilised the

amount for which the loan was taken or not. The answer to this question can be found from the Rules. The learned counsel for the applicant has produced before me an extract from the Swamys Book on House Building Advance Rules and at page 37 there is a reference to Government Official Memorandum dt. 14.2.1972. The O.M. says that government officials have made representations that some times they have to meet the initial expenditure for purchasing a house or building a house by taking loans at higher rates and that amount will have to be repaid after the government loan is sanctioned. The government has stated in this O.M. that the Government servants are permitted to utilise the loan amount for repayment of other loans taken from non-governmental sources to build a house even if the construction of the house has already commenced. Again at page 38, there is a reference to another O.M. dt. 17.4.1989 where it is pointed out that government servants had made representations that in many cases for want of funds the HBA may not be sanctioned in time and it may take long time for sanction of the same and in the meanwhile the employees are forced to raise loans from other financial institutions and other agencies. The Government has accepted the demand of the officials in this O.M. by stating that government servants can utilise the HBA for repayment of loans taken by them to build house or acquire a flat. It is further made clear that this concession is available even where the construction has commenced. Then, a doubt arose whether loan taken from other non-governmental agencies includes private persons like friends and relatives etc. / at page 39 of Swamys Book there is a reference to DOT letter dt. 19.1.1990 where it is clarified that non-government sources include private institutions relatives and

friends.

Therefore, if an official takes loan from a close relative in order to meet the demands as per the agreement with the Builder, then there is no impediment for him to utilise the subsequently sanctioned HBA for the payment of loan of close relatives as permitted by the O.Ms.

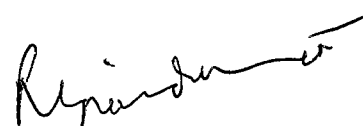
6. After taking into consideration number of documents produced by the learned counsel for the applicant and the explanation offered by her there is no difficulty to hold that there is no mis-utilisation of HBA sanctioned to the applicant and on the other hand, she has utilised that amount in purchasing the flat. It cannot be disputed that applicant has purchased the flat and she is residing there. The only dispute is whether HBA amount has been utilised for that purpose. Number of documents produced by the applicant and her explanation are sufficient to come to the conclusion that there is no mis-utilisation of HBA amount in this case and it has been utilised for the purpose for which it was sanctioned viz. to acquire a flat in her name. It may be, there is some delay in getting conveyance of the document of title in view of dispute between the builder and the Housing Society as could be seen from the General Body Meeting proceedings of the Society dt. 30.7.1996 which is at page 85 of the paper book. But, in this case, the respondents have not taken the stand that non-production of conveyance deed is the reason for demanding penal rent. The respondents stand is very clear that since the applicant has not utilised the amount for which the loan was taken, she is liable to pay penal interest. But, based on the available materials on record, I have no hesitation to hold that the applicant has utilised the HBA amount

...7.



for purchasing the flat though she has made some payments to the builder prior to the sanction of the loan by taking financial accommodation from her brother, which is permissible under the rules. Therefore, in my view the respondents are not justified in charging penal interest from the applicant. Hence, the interim order dt. 10.12.1998 cannot be sustained and is liable to be quashed.

7. In the result, the application is allowed. The impugned order dt. 10.12.1998 is hereby quashed. The respondents should not make any recovery in pursuance of that order hereafter. The respondents are also directed to refund whatever amount they have collected from the applicant from December, 1998 till now within a period of two months from the date of receipt of copy of this order. In the circumstances, there will be no order as to costs.



(R.G. VAIDYANATHA)

VICE-CHAIRMAN

B.