

Reserved on 15.12.2020

Delivered on 12.01.2021

Case :- MISC. BENCH No. - 21265 of 2020

Petitioner :- Arif Khan

Respondent :- Branch Manager Mahindra Finance Sultanpur & Another

Counsel for Petitioner :- Pradeep Kumar Shukla

Hon'ble Alok Singh,J.

Hon'ble Karunesh Singh Pawar,J.

Heard learned counsel for the petitioner and perused the record.

The petition seeks issuance of a writ in the nature of Mandamus directing the respondents Bank to provide the complete statement of Customer ID No. 11830806 to the petitioner with due amount and further direct the respondents to receive the due amount in easy installments.

On 23.11.2020, a query was made to the learned Counsel for the petitioner as to how the writ petition against a private bank i.e. Mahindra Finance is maintainable, to which learned Counsel for the petitioner has sought time to prepare the case.

Learned Counsel for the petitioner, while placing reliance upon the judgment of the Hon'ble Supreme Court in **Andi Mukta Sadguru Shree Muktajee Vandals Swami Suvarna Jayanti Mahotsav Smarak Trust and others Vs. V.R. Rudani and others** : (1989) 2 SCC 691 and **Manager, ICICI Bank Ltd. Vs. Prakash Kaur & others**, decided on 26.02.2007 (Appeal (Crl.) No. 267 of 2007), has submitted that the writ against the private bank is maintainable.

The only allegation made in the writ petition is against the Mahindra Finance.

The Apex Court in **Federal Bank Ltd. Vs. Sagar Thomas & Ors**, (2003) 10 SCC 733, considered the scope of issuance of writ under Article 226 of the Constitution against a private Bank. Following was laid down in paras 27 and 33.

"27. Such private companies would normally not be amenable to the writ jurisdiction under Article 226 of the Constitution. But in certain circumstances a writ may issue to such private bodies or persons as there may be statutes which need to be complied with by all concerned including the private companies. For example, there are certain legislations like the Industrial Disputes Act, the Minimum Wages Act, the Factories Act or for maintaining proper environment say Air (Prevention and Control of Pollution) Act, 1981 or Water (Prevention and Control of Pollution) Act, 1974 etc. or statutes of the like nature which fasten certain duties and responsibilities statutorily upon such private bodies which they are bound to comply with. If they violate such a statutory provision a writ would certainly be issued for compliance of those provisions. For instance, if a private employer dispense with the service of its employee in violation of the provisions contained under the Industrial Disputes Act, in innumerable cases the High Court interfered and have issued the writ to the private bodies and the companies in that regard. But the difficulty in issuing a writ may arise where there may not be any non-compliance or violation of any statutory provision by the private body. In that event a writ may not be issued at all. Other remedies, as may be available, may have to be resorted to.

33. For the discussion held above, in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such

activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor puts any such obligation upon it which may be enforced through issue of a writ under Article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant Bank. Respondent's service with the bank stands terminated. The action of the Bank was challenged by the respondent by filing a writ petition under Article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the Bank. That being the position, the appeal deserves to be allowed."

It is not the case of the petitioner that the Mahindra Finance is an authority within the meaning of Article 12 of the Constitution, nor it is alleged that there is any violation of any statutory provisions in the present case.

In view of the above, we are of the view that no grounds have been made out to issue any mandamus to a purely private body, namely, Mahindra Finance in the facts of the present case.

The judgment cited by the learned Counsel for the petitioner is not applicable in the facts and circumstances of the present case.

The writ petition is, accordingly, **dismissed**.

We, however, observe that it is open for the petitioner to take such civil or criminal action against the private body which may be permissible under law.

Order Date :- 12.1.2021

Madhu