



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.23022 of 2025

(In the matter of a petition under Articles 226 and 227 of the Constitution of India, 1950).

*Maa Tarini Poultries Pvt. Ltd.,* .... *Petitioner (s)*  
*Ganjam*

*-versus-*

*Indian Bank, Main Branch, Berhampur* .... *Opposite Party(s)*  
*& Ors.*

*Advocates appeared in the case through Hybrid Mode:*

*For Petitioner (s)* : *Mr. Meru Sagar Samantaray, Adv.*  
*Mr. Debasish Samal, Adv.*

*-versus-*

*For Opp. Party(s)* : *Mr. Tuna Sahu, Adv. (for Indian Bank),*  
*Mr. R.Roy, Adv. (for RBI).*

**CORAM:**

**DR. JUSTICE SANJEEB K PANIGRAHI**

**DATES OF HEARING:- 19.11.2025**

**DATE OF JUDGMENT:- 29.11.2025**

*Dr. Sanjeeb K Panigrahi, J.*

1. When discretion hardens into exaction, it ceases to be banking and becomes expropriation. The levy of pre-payment or foreclosure charges on floating-rate credit facilities, prohibited as it is by the RBI's binding directives, exemplifies such an impermissible transformation. A bank cannot convert a borrower's right to mobility into a chargeable



commodity. Any such attempt, as in the present case, stands condemned by statute, policy, and public interest alike. The instant case narrates the ordeal of the petitioner while dealing with the pre-payment's charges.

2. The Petitioner has invoked the writ jurisdiction of this Court, assailing the arbitrary and unsustainable demand raised by the Respondent-Bank towards foreclosure charges in respect of Item Loan Account No. 7166340164 and Cash Credit Account No. 7303572317, both availed by the Petitioner in its capacity as an MSME unit. The Petitioner contends that the impugned demand is devoid of contractual authority and contrary to the regulatory framework governing MSME lending, thereby warranting the Court's intervention. It is the specific case of the Petitioner that the levy of foreclosure charges is dehors the terms of the loan agreement, inconsistent with the directions issued by the Reserve Bank of India, and constitutes an instance of manifest arbitrariness. The Petitioner asserts that, having fully discharged all outstanding dues, no lawful basis exists for the Respondent-Bank to insist on foreclosure charges or to retain the Petitioner's secured documents. In these circumstances, the Petitioner prays for issuance of an appropriate writ, order, or direction directing the Respondent-Bank to forthwith release the original title deeds, property documents, and all collateral securities deposited by the Petitioner at the time of sanction of the aforesaid loan, the Petitioner's loan liabilities having admittedly been liquidated in full.



## I. FACTUAL MATRIX OF THE CASE:

### 3. The brief facts of the case are as follows:

- (i) The Petitioner is an MSME, Maa Tarini Poultries Pvt. Ltd., bearing Registration No. UDYAM-OD-11-0003310, had, with the objective of establishing an agro-based industrial unit, submitted an application before the Indian Bank, Main Branch, Berhampur, seeking sanction of a term loan of ₹1.80 Crores under the MSME Scheme.
- (ii) Pursuant to the said application, the Respondent-Bank sanctioned a loan of ₹1.80 Crores in February 2022 under the applicable MSME lending guidelines, subject to creation of a valid mortgage over the Petitioner's immovable property and furnishing of other collateral securities. Upon completion of the requisite documentation and security formalities, the sanctioned amount was duly disbursed in favour of the Petitioner.
- (iii) In terms of the loan agreement, the Petitioner regularly serviced the loan by making timely payments towards both principal and interest. However, following the sanction of the loan, the Petitioner encountered persistent harassment at the hands of Opposite Party No.1/bank. It is specifically alleged that the Bank compelled the Petitioner to procure an SBI Life Personal Insurance policy valued at ₹1.53 lakh per annum. When the Managing Director of the Petitioner declined to accede to this demand, Opposite Party No.1 allegedly proceeded to dishonour cheques issued by the Petitioner towards



repayment of instalments during the year 2023 and also obstructed the Petitioner's NEFT transactions.

- (iv) On 22.05.2023, the Petitioner's poultry unit suffered extensive and severe damage owing to a Kala Baisakhi storm. The Petitioner immediately approached Opposite Party No.1 seeking initiation of the requisite insurance claim process. However, no effective steps were taken by the Bank or its insurance partner. It was only after intervention by this Court after more than a year, the Bank and the insurer undertook the necessary assessment. This inordinate delay in processing the insurance claim caused grave financial strain and operational hardship to the Petitioner's enterprise.
- (v) Subsequently, the Petitioner approached HDFC Bank, Berhampur, for takeover of its existing loan facilities from Opposite Party No.1. Upon clearing all instalments outstanding with Opposite Party No.1, the Petitioner's loan accounts were duly taken over by HDFC Bank on 26.05.2024 and the Petitioner discharged the entire outstanding dues in full.
- (vi) Despite the complete liquidation of dues and formal takeover of the loan accounts by HDFC Bank, Opposite Party No.1 thereafter raised a demand for foreclosure charges at the rate of 4%, ostensibly towards loan closure. The said demand is contrary to the extant RBI guidelines governing MSME credit facilities, which expressly prohibit the imposition of foreclosure or prepayment penalties in the case of MSME loans.



(vii) Despite repeated and bona fide requests by the Petitioner seeking waiver of the 4% foreclosure charges and for return of its original title deeds, property documents, and collateral securities, Opposite Party No.1 has refused and neglected to take any action or even respond to the Petitioner's communication

(viii) Furthermore, the Petitioner has fully discharged all outstanding loan dues, but the Opposite Party No.1 continues to unlawfully withhold the mortgaged properties and original documents, instead of returning the same to the Petitioner as mandated under law and standard banking procedure.

(ix) Being aggrieved, the Petitioner personally visited the office of the Reserve Bank of India on 11.07.2025 to meet the Ombudsman and to ventilate the grievance in person. However, the officials informed the Petitioner that the mechanism under the RBI Ombudsman Scheme does not provide for personal hearings. Consequently, the Petitioner's grievance was neither heard nor was any substantive progress made on the complaint

4. Aggrieved by the aforesaid arbitrary actions and persistent inactions on the part of Opposite Party No.1 bank including the unwarranted levy of foreclosure charges, the unlawful withholding of the Petitioner's title deeds and collateral documents despite full repayment and the prolonged delay in facilitating the insurance claim for which the Petitioner has been left remediless before the banking authorities. With no efficacious statutory or departmental remedy available, and faced



with continuing prejudice to its proprietary and commercial rights, the Petitioner has been compelled to invoke the extraordinary jurisdiction of this Court by filing the present Writ Petition

## **II. SUBMISSIONS ON BEHALF OF THE PETITIONER:**

5. The learned counsel for the Petitioner Mr. Meru Sagar Samantaray respectfully and earnestly made the following submissions in support of his contentions:
  - i. The Petitioner is a registered MSME entity which, with the bona fide intention of establishing an agro-based enterprise, approached the Indian Bank in September 2020 seeking financial assistance under the MSME Scheme. The Petitioner's request for credit support was made in furtherance of the national objective of promoting micro and small enterprises, as reflected in the statutory framework of the MSMED Act, 2006 and the allied RBI directives intended to ensure timely and affordable credit to MSMEs.
  - ii. Pursuant to the aforesaid application, the Respondent Bank sanctioned a loan in February 2022 and issued a sanction ticket dated 09.02.2022, approving a total credit limit of ₹1.80 Crores under the applicable MSME guidelines. The sanction was accorded on the condition of creation of an equitable mortgage over the Petitioner's immovable properties and furnishing of collateral securities. Upon completion of the requisite security formalities, the sanctioned amount was duly disbursed to the Petitioner through the following two loan accounts:



**a. Term Loan Account No. 7166340164 — ₹1.45 Crore**

**b. Cash Credit Account No. 7303572317 — ₹35 Lakhs**

- iii. The Petitioner states that it has, at all material times, complied with the contractual terms governing the loan facilities and regularly discharged its repayment obligations towards principal and interest. However, the Petitioner was soon subjected to a series of unwarranted, coercive, and mala fide acts on the part of Opposite Party No.1, Indian Bank. It is specifically alleged that officials of Opposite Party No.1 exerted undue pressure upon the Managing Director of the Petitioner-MSME to compulsorily purchase a SBI Life Personal Insurance policy valued at ₹1.53 Lakhs per annum, thereby acting in effect as intermediaries or agents of the insurer which is impermissible under banking norms and violative of RBI's Fair Practices Code. Upon the Petitioner's refusal to succumb to such coercive solicitation, Opposite Party No.1 allegedly proceeded, with malice and retribution, to dishonour cheques issued by the Petitioner towards repayment of instalments during 2023, and further blocked NEFT transactions, thereby adversely affecting the Petitioner's business operations. Such conduct, apart from being arbitrary and unreasonable, constitutes an abuse of banking authority.
- iv. The Petitioner further submits that it suffered severe storm damage to its poultry farm on 22.05.2023 due to a *Kala Baisakhi* storm. Immediately upon the occurrence of the natural calamity, the



Petitioner approached Opposite Party No.1 seeking initiation of the insurance claim process. Despite repeated requests, Opposite Party No.1 failed to take any meaningful steps for over a year. It was only upon intervention of this Court in connected proceedings that the Bank and its insurance partner undertook the requisite assessment. By then, the Petitioner had already been compelled to expend substantial sums for reconstruction of the damaged farm. The inordinate delay in facilitating the insurance claim which is an obligation ancillary to the loan transaction that inflicted serious financial hardship and consequential operational losses upon the Petitioner. Such an apathetic conduct by the Bank strikes at the heart of its fiduciary like duties towards MSME borrowers and violates the principles of fairness, responsiveness, and transparency governing public sector banks.

- v. Owing to the cumulative difficulties created by Opposite Party No.1, the Petitioner approached HDFC Bank, Berhampur, seeking takeover of its existing loan facilities. After clearing all outstanding dues payable to Opposite Party No.1, the Petitioner's loan accounts were formally taken over by HDFC Bank on 26.05.2024. The Petitioner discharged its obligations by tendering the following amount of cheques on the following dates:

(a) 22.05.2024 — ₹35 Lakhs

(b) 26.05.2024 — ₹1.10 Crore





Thus, the Petitioner fully and finally extinguished the loan liability owed to Opposite Party No.1.

- vi. However, despite the complete repayment and takeover, Opposite Party No.1 proceeded to raise a demand for foreclosure charges at the rate of 4% of the outstanding amount. The imposition of such foreclosure charges is patently unlawful and ex facie contrary to the extant RBI guidelines, which categorically prohibit banks from levying pre-payment or foreclosure charges on MSME loans under floating-rate structures<sup>1</sup>. These binding directives are aimed at ensuring credit mobility, reducing financial burden on MSMEs, and preventing anti-competitive practices by banking institutions. The insistence of Indian Bank on levying foreclosure charges, in defiance of a clear regulatory mandate, amounts to an arbitrary and unreasonable exercise of power. It also undermines the legislative and policy intent underlying MSME protection, rendering the action susceptible to judicial review.
- vii. He further submits that the Supreme Court of India in *Central Bank of India v. Ravindra*<sup>2</sup> dictates the circular issued by the Reserve bank of India is binding on the commercial banks in India. Further,

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<sup>1</sup> RBI Circular DBR.No. Dir.BC.07/13.03.00/2012-13 dated 01.07.2014 which extends the non-levy mandate to all floating rate loans to MSMEs, including:

- Working capital
- Term loans
- Credit facilities

<sup>2</sup> (2002) 1 SCC 367



in *ICICI Bank v. Official Liquidator*<sup>3</sup>, it has been held that contractual terms cannot override directives of the RBI. Meaning thereby, if RBI prohibits foreclosure charges, no contract can validate them applying this principle, any foreclosure charge levied is contrary to RBI's prohibition. Therefore, charging "processing fee on prepayment" or "switch-over charge" are nothing but disguised charges as foreclosure charges which is illegal. This action of the bank brazenly violates statutory RBI guidelines, attracting the doctrine of public law obligations.

- viii. Despite repeated written and oral representations made by the Petitioner seeking waiver of the illegal foreclosure charges and requesting the return of the original title deeds and collateral documents after the complete liquidation of all outstanding dues, the Opposite Party No.1/Bank has refused to take any action. The continued inaction of the Bank and its deliberate retention of the Petitioner's documents is wholly unjustified, arbitrary, and in derogation of settled banking practices that require immediate release of securities upon repayment.
- ix. Notwithstanding the Petitioner's full repayment of dues, Opposite Party No.1/Bank continues to unlawfully withhold the following mortgaged properties/documents:
- a. A residential property situated at Berhampur, valued at approximately ₹2 Crores;

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<sup>3</sup>(2010)10 SCC 1



- b. 5.9 acres of Garabari land in Dimiria Mouza near NH-16, which is critical to the Petitioner's operational infrastructure.

Such illegal retention of securities amounts to an infringement of the Petitioner's proprietary rights under Article 300-A of the Constitution and gives rise to a continuing cause of action warranting exercise of writ jurisdiction by this Court.

- (ix) Aggrieved thereby, the Petitioner personally visited the Reserve Bank of India on 11.07.2025 with the intention of presenting the grievance before the Ombudsman. However, the Petitioner was informed that the Ombudsman Scheme does not provide for personal hearings. Consequently, the Petitioner's grievance was neither heard nor redressed, and the status of the complaint has continued to remain stagnant as "waiting for Bank's reply" for over a month. This failure of internal grievance-redressal mechanism has left the Petitioner remediless, thereby necessitating the present invocation of the extraordinary writ jurisdiction of this Court.

### III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

6. Learned counsel for the Opposite Parties Mr. Tuna Sahu contended that the present Writ Petition is not maintainable before this Court as to be rejected in limine.
- i. The Opposite Parties submitted, at the outset, that the Petitioner has not approached this Court with clean hands and have attempted to



mislead the Court by suppressing material facts and by presenting a distorted and incorrect factual narrative.

- ii. It is submitted that on 28.12.2021, the Petitioner approached the Indian Bank, Berhampur Branch seeking two credit facilities—namely, an Agricultural Term Loan (AGMTL) and an Open Cash Credit (OCC) facility, for the purposes of constructing its industrial unit and purchasing machinery for its commercial operations. Consequent thereto, the Bank, upon due appraisal, sanctioned the following credit facilities on 09.02.2022:

(a) **AGMTL (Agricultural Term Loan)** – ₹145 Lakhs

(b) **OCC (Open Cash Credit)** – ₹35 Lakhs

- iii. The Opposite Parties further submitted that the RBI circulars relied upon by the Petitioner pertain exclusively to floating-rate home loans and loans extended to individual borrowers. The present facilities were availed for commercial/business purposes and not as retail loans to individuals. Hence, the aforesaid circulars have no application to the present case, and the Petitioner's reliance thereon is wholly misconceived.
- iv. It is further submitted that after availing and fully utilising the sanctioned loan facilities for profit-oriented business activities, the Petitioner failed to service the interest obligations, leading to accumulation of substantial overdue amounts in the loan account. Despite repeated notices, letters, and reminders issued by the Bank, the Petitioner persistently failed to furnish the requisite financial



- documents necessary for renewal of the OCC account, thereby violating contractual obligations.
- v. On 05.03.2024, the Bank issued a detailed communication specifying the documents required from the Petitioner and clearly intimating that non-submission or delayed submission thereof would attract an Additional Rate of Interest (ARI) as per the sanction terms. Further letters dated 16.04.2025 and 24.05.2025 were issued, calling upon the Petitioner to regularise the overdue amounts.
  - vi. The Opposite Parties contended that apprehending that the account may be classified as sub-standard under RBI's asset classification norms due to persistent non-compliance and absence of mandated documentation, the Petitioner, without rectifying the deficiencies, sought to have the credit facilities taken over by HDFC Bank.
  - vii. It is further submitted that the Petitioner has committed multiple breaches under the Term Loan Agreement, the OCC Agreement, and the Agreement of Hypothecation relating to the agricultural loan. Having unequivocally consented to abide by all terms and conditions of sanction including the levy of applicable service charges, the Petitioner cannot now turn around and challenge the consequences flowing from such contractual breaches.
  - viii. The Opposite Parties further submitted that Clause 10 of the post-disbursement conditions of the Sanction Letter dated 09.02.2022 expressly provides that, in the event of a takeover, service charges at the rate of 4% of the total outstanding or the drawing limit,



- whichever is higher, shall be leviable in respect of both the Term Loan and OCC facilities. The Petitioner, having accepted these terms by affixing his signature and seal, is estopped from disputing the same at this belated stage.
- ix. It is submitted that, in line with internal circulars and revised norms, the Bank issued a communication dated 30.07.2025 informing the Petitioner that although the sanction terms prescribed service charges at 4% of the outstanding or drawing limit, the applicable rate had since been revised to 2%, which was being extended to the Petitioner as a measure of fairness and consistency.
- x. Lastly, it is submitted that the Petitioner had earlier raised an identical grievance before the Banking Ombudsman under the RBI Integrated Ombudsman Scheme. After considering the submissions and material on record, the said complaint was rejected and closed on 31.07.2025. The Petitioner, having already invoked and exhausted the statutory grievance redressal mechanism, cannot re-litigate the same issue before this Hon'ble Court.

#### IV. COURT'S REASONING AND ANALYSIS:

7. Heard Learned Counsel for parties and perused the documents placed before this Court.
8. This Writ Petition challenges the conduct of Opposite Party No.1 (Indian Bank) in relation to loans sanctioned to the Petitioner, namely, (a) alleged coercion to procure an insurance policy; (b) dishonour/obstruction of payment instruments and banking



transactions; (c) prolonged inaction and unreasonable delay in processing an insurance claim arising out of a natural calamity; (d) insistence on a 4% “foreclosure / takeover” charge despite full repayment and takeover by HDFC Bank; and (e) continued retention of original title deeds and collateral documents after the alleged repayment/closure. The Petitioner seeks, inter alia, quashing of the Bank’s demand for foreclosure charges and immediate return of original documents.

9. Banking contracts operate within a dense network of public regulatory norms. When a regulatory authority, for reasons of public policy, prescribes protections for a class of borrowers (here, MSMEs), contractual terms inconsistent with such prescriptions cannot be enforced. This is not to erode the contractual autonomy but to affirm that autonomy exists only within the bounds of law. In light of the foregoing facts, the Court observes that the issue consideration pertains to the interpretation of the Loan Agreement vis-à-vis the applicable RBI guidelines. Reliance is placed upon *ABL International Ltd v. Export Credit Guarantee Corporation of India Ltd.*<sup>4</sup>, wherein the Supreme Court has authoritatively held that, in appropriate cases, the writ court is vested with the jurisdiction to entertain a petition even where certain factual disputes arise, and that questions relating to the interpretation or construction of documents may be examined and adjudicated upon in exercise of writ jurisdiction, if the attendant facts so permit.

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<sup>4</sup> (2004) 3 SCC 553



## A. ANALYSIS AND APPLICATION OF THE STATUTORY FRAMEWORK:

10. In the present case, the Petitioner is a registered MSME engaged in the poultry sector under the activity head pertaining to the manufacturing/raising of poultry and production of eggs, as classified under the relevant National Industry Classification code(s). Section 10 of the Micro, Small and Medium Enterprises Development Act, 2006 enjoins the formulation of progressive credit policies for MSMEs, in consonance with the guidelines issued by the RBI, so as to ensure a timely and unhindered flow of credit to such enterprises. The statutory framework, therefore, reinforces the authority of the RBI to regulate and prohibit the levy of exploitative charges, including foreclosure penalties, in respect of MSME loans.
11. The Banking Codes and Standard Board of India (BCSBI) has formulated a *Code of Bank's Commitment to Micro and Small Enterprises*, which prescribes the minimum standards of fair and transparent banking practices for banks to be adhered to by banks while dealing with Micro and Small Enterprises (MSEs) as defined under MSMED Act, 2006.
12. The substance of a charge, not its label, determines its legality. Disguised prepayment fees undermine the regulatory objective of enabling credit mobility for small enterprises. Reference may also be had to the RBI Circular dated 02.08.2019 titled "*Levy of Foreclosure Charges/Pre-Payment Penalty on Floating Rate Term Loans*", wherein it has been clarified that banks shall not levy foreclosure charges or pre-





payment penalties on floating rate term loans sanctioned to individual borrowers for purposes other than business.

**13.** The Bank's subsequent internal communication lowering the rate to 2% (dated 30.07.2025) cannot cure the original illegality if the levy itself is contrary to mandatory regulatory prescription. The demand of 4% or any similar charge which in substance operates as a foreclosure/prepayment/takeover fee on MSME credit, where regulatory prescription forbids such levy, is unlawful, arbitrary and must be quashed.

#### **B. RBI GUIDELINES AND REGULATORY DIRECTIONS:**

**14.** The RBI's regulatory framework on this subject has undergone a calibrated evolution, commencing with the prohibitions of prepayment penalties for individual borrowers and thereafter being progressively extended to MSMEs with a view to advancing financial inclusion and facilitating unhindered access to credit. These directives underscore that foreclosure charges (also known as pre-payment penalties) ought not be levied on floating-rate loans, as such levies do not constitute a legitimate pre-estimate of loss to the bank but, instead, operate as a disincentive to early repayment or loan refinancing. The underlying intent of RBI is cultivating a borrower-centric regime, particularly for MSMEs, which constitute a pivotal segment of the national economy and frequently grapple with liquidity constraints.

**15.** The BCSBI, being a set of commitments voluntarily adopted by banks, attains enforceability to the extent that non-compliance may be



subjected to scrutiny before the Banking Ombudsman. In the present case, the Petitioner initially approached the Indian Bank, Zonal Office (Opp. Party No.2), but no response was forthcoming. Consequently, the Petitioner lodged a complaint before the Reserve Bank of India on 04.07.2025, being Complaint No. N2025260030026, assailing the levy of unlawful foreclosure charges and the withholding loan documents. Owing to certain technical impediments faced during the filing process, the Petitioner personally visited the office of the RBI on 11.07.2025 to meet the ombudsman and submit the grievance in person. However, the authorities neither afforded the Petitioner an opportunity of hearing nor took any steps to advance the complaint, thereby leaving the grievance unaddressed.

**16.** This Court is of the considered view that the Bank's insistence on levying 4% charges and its continued withholding of the Petitioner's documents is wholly arbitrary and falls foul of the mandate of Article 14 of the Constitution of India. It stands admitted that the Petitioner has repaid the loan in its entirety upon takeover by HDFC Bank through cheques dated 22.05.2025 and 26.05.2025. notwithstanding such full repayment, Opp. Party No.1 has withheld the property documents, thereby unjustly depriving the Petitioner of enjoyment of her property and infringing the guarantee under Article 300A of the Constitution of India.

**17.** Section 21 of the Banking Regulation Act, 1949 confers upon the RBI to regulate the lending and credit practices of banking companies. Under



Section 21(1), the RBI is empowered to formulate and determine policies relating to advances whenever it considers such intervention necessary or expedient in the public interest or the interest of depositors. Section 21(3) further mandates that every banking company shall comply with all direction issues by RBI in this regard. A Section 35A gives RBI even wider powers to intervene in banking operation. Thus, the statutory scheme unequivocally establishes the binding nature of RBI directives on all banking institutions.

18. While the bank-borrower relationship is essentially contractual, commercial banks perform functions touching upon public interest when they service citizens' access to credit. Such functions attract duties of fairness, reasonableness and timely action and under the regulatory bounds. The Supreme Court echoed in the *Central Bank of India v. Ravindra(supra)* held that RBI's circulars on interest and lending terms are binding and act as bench marks against excessive or unfair practices which held in the following:

*"5. The power conferred by Section 21 and 35-A of the Banking Regulation Act, 1949 is coupled with duty to act. Reserve Bank of India is the prime banking institution of the country entrusted with a supervisory role over banking and conferred with the authority of issuing binding directions, having statutory force, in the interest of public in general and preventing banking affairs from deterioration and prejudice as also to secure the proper management of any banking company generally. Reserve Bank of India is one of the watchdogs of finance and economy of the nation. It is, and it ought to be, aware of all relevant factors, including credit conditions as prevailing, which would*



*invite its policy decisions. RBI has been issuing directions/circulars from time to time which, inter alia, deal with the rate of interest which can be charged and the periods at the end of which rests can be struck down, interest calculated thereon and charged and capitalized. It should continue to issue such directives. Its circulars shall bind those who fall within the net of such directives. For such transaction which are not squarely governed by such circulars, the RBI directives. For such transaction which are not squarely governed by such circulars, the RBI directives may be treated as standards for the purpose of deciding whether the interest charged is excessive, usurious or opposed to public policy”*

### **C. CONTRACTUAL FRAMEWORK AND BAR ON UNFAIR TERMS:**

**19.**It is a basic tenet of law of contract that contractual terms cannot be read to defeat or circumvent statutory or regulatory mandates. Parties may contract within the ambit of law, but they cannot contract out of mandatory regulatory prescriptions. It is equally settled that a bank while entitled to protect its commercial interests must act within the regulatory framework and in consonance with principles of fairness and reasonableness. This Court finds it necessary to examine the impugned condition is unfair within the meaning of the statutory scheme. Section 23 of the Indian Contract Act, 1872, particularly its underlying principle as reflected in judicial interpretation, prescribes the incorporation of terms that are unconscionable or contrary to public policy and the contractual stipulation that are blatantly unfair or



oppressive in their operation stand vitiated as being opposed to public policy and are, therefore, void.

20. The Supreme Court in the case of *LIC of India & Anr v. Consumer Education & Research Centre & Ors*<sup>5</sup>, held that

*".....23. Every action of the public authority or the person acting in public interest or any act that gives rise to public element, should be guided by public interest. It is the exercise of the public power or action hedged with public element (sic that) becomes open to challenge. If it is shown that the exercise of the power is arbitrary, unjust and unfair, it should be no answer for the a State, its instrumentality, public authority or person whose acts have the insignia of public element to say that their actions are in the field of private law. Its actions must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations. Every administrative must be hedged by reasons."*

*".....47. it is, therefore, the settled law that if a contract or a clause in a contract is found unreasonable or unfair, irrational, one must look to the relative bargaining power of the contracting parties. In dotted line contracts there would be no occasions for weaker party to bargain or to assume to have equal bargaining power. He has neither to accept or leave the services or goods in terms of the dotted line contract. His option would be either to accept the unreasonable terms or forego the service for ever. With a view to have the services of the goods, the party enters into a contract with unreasonable or unfair terms contained therein and he would left with no option but to sign the contract".*

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<sup>5</sup> 1995 SCC (5) 482



#### **D. FORCLOUSRE AND PREPAYMENT LEVIES: EXAMINATION OF THEIR ANTI-COMPETITIVE PRACTICES:**

**21.** The issue bears direct relevance to the imposition of foreclosure and prepayment charges. The levy of such penalties operates as a deterrent to borrowers who intend to repay their loans ahead of schedule or shift to a competing lender. The consequences of this practice are the stifling of competition in the credit market, compelling borrowers to remain tied to a particular institution and thereby imposing an unwarranted restriction and freedom of trade and choice of consumer.

**22.** In *Competition Commission of India v. Steel Authority of India Ltd.*<sup>6</sup>, the Supreme Court has elucidated that the principal objectives of the Competition Act, as discernible from its Preamble and Statement of Objects and Reasons, are to eliminate practices having an adverse effects on the competition, to promote and sustain competition in the market, to protect the interest of the consumers, and to secure the freedom of trade carried on by the participants in the market, in view of the economic developments of the country. The Court emphasised that the Act is intended not merely to safeguard the integrity of trade but equally to ensure the protection of consumer interest.

**23.** As per the Competition Act, 2002, Section 3(1), expressly prescribes agreements which cause or are likely to cause an appreciable adverse effect on competition. Under Section 3(3)(b), a presumption of anti-competitive effects arises where there is any practice resulting in

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<sup>6</sup> Civil Appeal No. 7779 of 2010 (Supreme Court)



limitation or control in provision of services. The imposition of prepayment or foreclosure penalties, by its very nature, operates as a mechanism of control, curtailing consumer choice and impeding healthy competition among banks and financial institutions.

24. A similar view has been reiterated by the Ld. NCDRC in *Dr. Usha Vaid vs. State Bank of India*<sup>7</sup>, it was held that in a consumer grievance case, it has upheld the decision of the National Consumer Grievance Redressal Commission wherein, it was held by them that there should be no pre-payment charge on migration of loan to another lender and the levy of pre-payment penalty amounts to unfair and restrictive trade practices. The State Bank of India challenged the said order till the Supreme Court of India but the Supreme Court also did not interfere with the said order though the issue of foreclosure of loan charges is yet to be settled by an authoritative pronouncement of the Apex Court.

25. In the present case, the loan was sanctioned in favour of the Petitioner is conspicuously bereft of any covenant authorising the imposition of pre-payment or foreclosure charges. Even assuming, *arguendo* and only for the sake of academic hypothesis, that such a stipulation could somehow be conjured out of the sanction terms, the very act of levying such a charge would nevertheless collide frontally and irreconcilably with the binding and plenary regulatory mandates promulgated by the Reserve Bank of India under the aegis of Sections 21 and 35A of the Banking Regulation Act, 1949. These directives, which operate with the

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<sup>7</sup> Revision Petition No. 2466/2007, (NCDRC)





force and authority of subordinate legislation, categorically interdict the levy of foreclosure or pre-payment penalties on floating-rate credit facilities extended to MSMEs; any contractual clause that offends or undermines this regulatory proscription stands ipso jure nullified and is rendered a legal nullity in the eyes of the law.

26. Moreover, the Opposite Party No.1's insistence on enforcing such an ex-facie impermissible and statutorily interdicted levy is not merely ultra vires the binding regulatory architecture fashioned by the Reserve Bank of India, but also strikes at the very ethos, spirit, and animating objectives of the Competition Act, 2002, which denounces anti-competitive practices designed to shackle borrower mobility, distort market equilibrium, and perpetuate monopolistic rigidity. The impugned demand raised by Indian Bank is, therefore, arbitrary in conception, oppressive in its practical manifestation, and wholly unsustainable in a juridical sense.

27. Its refusal to release the Petitioner's original title deeds and security documents on the basis of such a tenuous, non-est, and statutorily prohibited demand amounts to a palpable and egregious abuse of authority, standing in stark violation of constitutional discipline, public interest, and settled norms of administrative propriety. Such conduct, being manifestly arbitrary and antithetical to the rule of law, cannot withstand the rigours of judicial scrutiny under any recognised standard, be it the Wednesbury doctrine, the modern arbitrariness test





under Article 14, or the broader contours of constitutional morality and fair play in action.

**E. INSURANCE DELAYS, ALLEGED COERCION AND MALA FIDES AND FIDUCIARY-LIKE DUTIES OF BANK**

28. Banks, when acting as facilitators of insurance cover ancillary to credit facilities, owe duties of good faith and fair dealing towards borrowers. Undue pressure on borrowers to purchase particular insurance products, and failure to process insurance claims with reasonable expedition, especially where delay causes demonstrable loss, are inconsistent with the Bank's regulatory and ethical obligations. The Petitioner's evidence of alleged coercion to procure an SBI Life Personal Insurance policy and of delay in processing the insurance claim and compelling the Petitioner to undertake reconstruction expenditure constitute matters of serious concern.

29. While this Court must be cautious in substituting its evaluation for that of specialized insurance assessors, where delay is shown to be unreasonable and caused by the Bank's omission and where such delay results in hardship, the Court may direct remedial measures, including compulsion to co-operate with insurers and to expedite assessment and settlement.

**F. RETENTION OF TITLE DEEDS AND COLLATERAL DOCUMENTS – LEGAL POSITION AND CONCLUSION:**

30. Banks hold original title deeds and securities as custodians for the purpose of credit security. At the point of full repayment and formal



closure/takeover, banking practice and legal principle require immediate release and return of original documents to the borrower. The retention beyond lawful entitlement, in the absence of any continuing legitimate charge or pending requirement, constitutes an unreasonable interference with proprietary rights of the customer. Article 300-A and the doctrine of legitimate expectation enjoin that citizens should not be deprived of property save by lawful authority and procedure.

31. On the record before this Court, the Petitioner has produced evidence of payment of the sums necessary for takeover and has repeatedly requested return of documents which the Bank has refused or neglected to return. No credible justification is shown for continuing retention. That conduct is found to be arbitrary and violative of the Petitioner's proprietary rights.

#### V. CONCLUSION:

32. In view of the foregoing analysis and upon an anxious consideration of the material facts and circumstances of the case, this Court is of the considered opinion that the Petitioner is entitled to waiver of the foreclosure charges sought to be levied on the outstanding loan amount on the date of its repayment. Consequently, Opposite Party Nos. 1 & 2 are directed to forthwith release the Petitioner's MSME's property documents along with all other allied documents without insisting on payment of such charges.



33. Accordingly, the Writ Petition stands **allowed** in the foregoing terms. Consequent reliefs shall follow in accordance with law. The parties shall act in good faith to give effect to this judgment. The bank shall file an affidavit of compliance as directed within one month from today. If compliance is not affected, the Petitioner is at liberty to place the non-compliance before this Court for further directions. No order as to costs.
34. Interim order, if any, passed earlier stands vacated.

*(Dr. Sanjeeb K Panigrahi)*  
*Judge*

*Orissa High Court, Cuttack,*  
*Dated the 29<sup>th</sup> November., 2025*