

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Writ Petition (Civil) No.16310-11/2006**

% **Date of Decision: 09.09.2009**

Sanjeev Bhel & Another Petitioners
Through Mr.Pankaj Gautam, Advocate

Versus

Punjab National Bank & another Respondents
Through Mr.Pankul Nagpal, Advocate

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J. (ORAL)

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1. Learned counsel for the petitioners seeks an adjournment on the ground that the counsel is indisposed and has not started coming to the Court after her disability.

2. Perusal of the record reveals that the learned counsel, Mr.Pankaj Gupta is appearing in the matter since 30th April, 2007 and the matter has been adjourned on account of one reason or the other reason attributable to the counsel for the petitioner.

3. In the circumstances, the request for adjournment is declined.

4. The petitioner has filed the present petition seeking direction for quashing the decision alleged to have been taken by the respondent No.1 in their letter dated 15th May, 2006 on the request of the petitioner seeking settlement of litigation of the loan account in the name of M/s. Rajnath Motors Pvt. Ltd. The petitioner has also sought that the petitioner's request for one time settlement be considered in accordance with the RBI circulars and policy guidelines without discrimination and to issue direction to the respondent Bank to refund the excess amount after adjusting OTS dues.

5. The plea of the petitioner is that by letter dated 15th May, 2006, compromise proposal of the petitioner was approved for Rs.20.12 lakhs along with interest from 1st April, 2006 on the terms and conditions stipulated in the said letter.

6. The petitioner has impugned the settlement on the ground that the settlement agreed by the respondent Bank is not in consonance with the RBI policy guidelines issued in public interest and in exercise of power under Section 21 read with Section 35 (a) of Banking Regulation Act, 1949.

7. Learned counsel for the petitioner has also relied on 2009 (10) Scale 566, M/S.Sardar Associates & Others v. Punjab & Sind Bank & Others to contend that the respondent is liable to consider the guidelines of the Reserve Bank of India for settlement offered by the petitioners.

8. The petition is contested by the respondent and respondent has filed an affidavit contending that the recovery proceedings had been filed against the petitioner long back on 22nd December, 1998 and a final order of recovery certificate was passed on 23rd November, 2001 whereby the liability of the petitioners has been held to be Rs.10,68,315.77 with costs as well as pendente lite and future interest at the rate of 19.38% per annum. According to the respondent, the guidelines for compromise settlement do not cover the cases of willful default, fraud and malfeasance and in respect of cases which have been identified as doubtful or the non-performing assets which have been classified as on 31st March, 2000. Respondent Bank has also objected to the applicability of the guidelines on the ground that the guidelines are applicable to the pending proceedings.

9. Learned counsel for the respondents also contends that an appeal challenging the recovery certificate issued against the petitioner was filed after letter dated 15th May, 2006 accepting the proposal of the petitioner was issued which has been challenged in the present petition. The appeal of the petitioners with an application for condonation of delay in filing the appeal is also pending before the Appellate Tribunal.

10. Considering the facts and circumstances, it cannot be disputed that the question of the applicability of the guidelines can be considered by the Appellate Tribunal. Learned counsel for the petitioner contends that the question of delay is also involved in the appeal which has been filed after filing the present petition.

11. Since the matter is already pending before the Appellant Debt Recovery Tribunal, the applicability of the Reserve Bank circulars for settlement of disputes between the petitioners and the respondents can be considered by the Appellate Tribunal. If an alternate remedy is available to the petitioners, they are not entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution of India in the present facts and circumstances of the case. There cannot be any doubt whatsoever that the question as to when a discretionary jurisdiction is to be exercised or refused to be exercised by the High

Court has to be determined having regard to the facts and circumstances of each case, where for no hard-and-fast rule can be laid down. But normally, the High Court does not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute. To the doctrine of exhaustion of alternative remedy there are two exceptions. One is when the proceedings are under a provision of law which is ultra vires which will entail quashing of same on the ground that the proceedings are incompetent without a party being obliged to wait until those proceedings run their full course. The other exception is when an order is made in violation of principles of natural justice and the proceedings itself are an abuse of process of law. A Division Bench of the Supreme Court in *ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.* ((2004) 3 SCC 553: JT (2003) 10 SC 300 [12]) observed that the High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition and it is the Court that has imposed upon itself certain restrictions in the exercise of this power. The Supreme Court had held on page 572 in para 28 as under:

“28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article

226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. ***The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power.*** (See *Whirlpool Corpn. v. Registrar of Trade Marks*) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.”

12. The writ petition of the petitioners does not challenge any statute or provision of law which is ultra vires. Rather it is contended that Policy of Reserve Bank of India and its circular for settlement of NPA accounts is applicable to the case of the petitioners and the plea of the settlement of the petitioners should be considered with regard to policy and circulars of the Reserve Bank of India. It is also not disputed that the appeal of the petitioners with an application for condonation of delay in filing the appeal is pending. In the circumstances, the Appellate Tribunal will be competent to consider this plea also in accordance with law and rules and regulations.

13. The petitioners have not challenged the decision of the respondent bank on the ground that the decision has been taken in violation of the principles of natural justice. In the circumstances, it will

be appropriate for the petitioners to approach the Appellate Tribunal in the Appeal which is already pending with an application for condonation of delay, for resolution of present dispute also as to whether the bank is liable to consider the proposal of the petitioners for one time settlement in the light of policy and guidelines of the Reserve Bank of India. In the circumstances, this Court also declines to invoke its jurisdiction under Article 226 of the Constitution of India.

14. In the circumstance, the writ petition is disposed of with liberty to the petitioners to raise the applicability of the policy of Reserve Bank of India and its guidelines for settlement of their proposal for one time settlement, in case it is raised by the petitioners before the Appellate Tribunal in accordance with law. With these directions, the writ petition is disposed of. Parties are, however, left to bear their own costs.

September 9, 2009
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ANIL KUMAR, J.