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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9924 OF 2013

Deepak Suryakant Khude and Ors. … Petitioners

Vs.
The Reserve Bank of India and Ors. … Respondents

Mr. M.S. Karnik i/by Mr. Sanskar Marathe, for the Petitioners.
Mr. Venkatesh R. Dhond, Senior Advocate a/w Mr. Shenoy Prasad and Mr. Kinshuk Kislaya i/by M/s. Udwadia & Udeshi, for the Respondent No.1.
Mr. Anilkumar K. Patil, for the Respondent No.2.
Mr. V.P. Malvankar, AGP 'A' Panel, for the Respondent No.3.

CORAM : A.S. OKA &
REVATI MOHITE DERE, JJ.

DATE : 15th JUNE, 2015

P.C.

. Heard the learned counsel appearing for the Petitioners. The Petitioners applied for the benefit of grant of One Time Settlement Scheme under the Government Resolution of the State Government dated 10th March, 2007. The said Scheme is known as One Time Settlement Scheme of 2008. The Petitioners are borrowers of the second Respondent Co-operative Bank. In the scheme which is annexed to the Government Resolution dated 10th March, 2007, it is provided that if borrowers or guarantors are related to the Directors of the Bank, only after prior approval of the Reserve Bank of India, the benefit of One Time Settlement Scheme can be extended. On the basis of the application made by the Petitioners, the second Respondent - Bank referred the matter to the Reserve Bank of India as one Mr. Vikas Dattatray Ghongane who was one of the guarantors of the Petitioners was a relative of the Bank's Director Shri. Vasantrao Rudarappa Nagarkar. By communication dated 19th June, 2012, the Reserve Bank of India informed the second Respondent - Bank to furnish certain information. Accordingly, information was furnished by the second Respondent - Bank. By communication dated 15th January, 2013, the Reserve Bank of India informed the second Respondent that the said Bank was unable to accede to the request of the second Respondent to grant benefit of One Time Settlement Scheme to the Petitioners. The challenge in this Writ Petition under Article 226 of the Constitution of India is to the action of denying the benefits of the said Scheme to the Petitioners.

2. There is a reply filed by Shri B. Chandrashekhar, the General Manager, Department of Co-operative Bank Supervision of the Reserve Bank of India at Mumbai. In the said affidavit, reliance has been placed on the circular dated 29th April, 2003 issued by the Reserve Bank of India which provides that the Urban Co-operative Banks are prohibited from providing loans (both secured and unsecured) to the

Directors, their relatives and the firms/concerns/companies in which they are interested, with immediate effect. It is stated that advances existing prior to 29th April, 2003 may be allowed to continue up to the date when they are due. It is stated that advances should not be renewed or extended further. The reliance is also placed on clarification dated 7th August, 2004 issued by the Reserve Bank of India. The clarification is that in view of the circular dated 1st October, 2003, the Directors and their relatives cannot stand as surety/guarantor to the loans and advances (both secured and unsecured) sanctioned by the Urban Co-operative Banks.

3. On the basis of the aforesaid circulars of the Reserve Bank of India, the said Bank expressed inability to grant permission to give the benefit of One Time Settlement Scheme to the Petitioners.

4. The first submission of the learned counsel appearing for the Petitioners is that the loans/ advances in respect of which One Time Settlement Scheme was claimed were advanced prior to April 29, 2003. He would, therefore, urge that the circular dated 29th April, 2003 and further clarification dated 7th August, 2004 will not apply. His second submission is that the word “relationship” has not been defined by the Reserve Bank of India. He states that in this case, the guarantor's wife is the real sister of one of the Directors of the second Respondent - Bank.

He, therefore, urged that the relationship being not blood relationship, it was not necessary for the second Respondent to seek approval of the Reserve Bank of India.

5. We have considered the submissions. It is well settled that the Petitioners are not entitled to the benefit of One Time Settlement Scheme as a matter of right. It is not in dispute that one of the guarantors of the Petitioners was related to the Directors of the second Respondent - Bank. Therefore, as per the said Scheme of the year 2008, the second Respondent was not entitled to grant benefit of One Time Settlement Scheme to the Petitioners without prior approval of the Reserve Bank of India. It is not disputed that when an application for grant of One Time Settlement Scheme was made, the loan amount was overdue.

6. It will be necessary to make a reference to the circular dated 29th April, 2003 issued by the Reserve Bank of India. The relevant part of the circular reads thus :-

> "2. A number of instances have come to the notice of the RBI, where, because of the concentrated exposures built up by urban co-operative banks to the directors, their relatives or firms in which they are interested, the banks have run into financial problems on account of such accounts becoming NPAs. In this context, the Joint

Parliamentary Committee (JPC) which enquired into the stock market scam and matters relating thereto in paragraph 5.66 of its report (extracts enclosed) has made various recommendations. <u>It has recommended that in order to prevent irregularities of the type which surfaced in the case of some of the cooperative banks examined by it, a full ban should be imposed on granting of loans and advances to the directors, their relatives and concerns in which they are interested.</u>

3. In line with the above recommendations of the JPC, the Reserve Bank has announced its policy in paragraph 116 of the Monetary and Credit Policy for the year 2003-04 (copy of the paragraph enclosed). Accordingly, primary (urban) cooperative banks are prohibited from extending any loans and advances (both secured and unsecured) to the directors, their relatives and the firms/concerns/companies in which they are interested, with immediate effect. <u>The existing advances extended prior to April 29, 2003 may be allowed to continue up to the date when they are due. The advances should not be renewed or extended further</u>. The other instructions contained in the above directive remain unchanged."

(underline added)

7. Further clarification issued by the Reserve Bank of India on 7th August, 2004 makes it clear that sanction of loans and advances against surety/guarantee of the Directors is against the spirit of the

circular and therefore, the Directors and their relatives cannot stand as surety/guarantor to the loans and advances sanctioned by the Urban Co-operative Banks. The decision taken by the Reserve Bank of India is on the basis of the circumstances which are narrated in clause 2 of circular dated 29th April, 2003. In the present case, the Petitioners are not disputing that one of the Directors had a close relationship with the guarantor of the Petitioners. If the contention of the Petitioners that the "relationship" will have to be construed only as a blood relationship is accepted, the very object of issuing the circulars will be frustrated. After finding that the loan/advance granted to the Petitioners became due and payable after 29th April, 2003, the Reserve Bank of India, on the basis of its earlier policy decision, declined to grant approval for extending the benefit of One Time Settlement Scheme to the Petitioners. The policy decisions reflected from the aforesaid circular taken by the Reserve Bank of India have been essentially taken to ensure that there is no conflict of interest in the grant of loans and advances. The decision of the Reserve Bank of India which is impugned in this Petition is based on its policy decisions.

8. Therefore, no interference can be made in the writ jurisdiction with the decision of the Reserve Bank of India of declining to grant permission to extend One Time Settlement Scheme to the

Petitioners. There is no merit in the Petition. Accordingly, the same is rejected.

9. At this stage, the learned counsel appearing for the Petitioners seeks extension of ad-interim relief. The prayer is opposed by the learned Senior Counsel appearing for the Reserve Bank of India. Considering the fact that ad-interim relief is operative for a considerable long time, the same shall operate for a period of six weeks from today.

(REVATI MOHITE DERE, J) **(A.S. OKA, J)**