HON'BLE SRI S.V.BHATT

W.P.No.40014 of 2012

ORDER:

The petitioners prays for writ of certiorari to call for the records leading up to and inclusive of order Ref.No.HO/RCR/DNT/ 1043/2011-12 dated 20.07.2012 of the 4th respondent and quash the same as illegal and violative of fundamental rights of the petitioner.

The impugned order reads as follows:

> "We refer to your representation/letter dated 22.11.2011 in response to our letter No.HO: RCR:DNT:3075:2011-12 dated 04.11.2011 on the captioned subject. As per RBI guidelines you were given notice dt.02.03.2012 to appear in person before Grievance Redressal Committee (Wilful Defaulter) of the bank on 19.03.2012. But you had expressed your inability to attend on such date and sought another date of your appearance. Accordingly GRC has considered your appeal and another date i.e 25.06.2012 was fixed for your personal hearing and accordingly notice dated 05.06.2012 was sent to you to appear before GRC. Mr.M.L.Agarwal MD appeared before GRC on 25.06.2012 and made submission for not identifying the account as Wilful Defaulter.
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> The Grievance Redressal Committee (Wilful Defaulter) of the Bank in its meeting dated 25.06.2012 after consideration of the representation of the firm, has passed the following order:
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> "**The Company indulged in diversion of funds and did not utilized the bank's fund for the purpose it was sanctioned and also defaulted in meeting its payment obligation to the Bank. Thus the decision of the Committee for identification of Wilful Defaulter is correct and directed the Department to make reporting to RBI/CIBIL as per extant guidelines of RBI**".

The impugned communication refers to the alleged diversion of funds, its mis-utilization and default in meeting the payment obligation. The said conclusion resulted in identification of petitioners as willful defaulters. The status of petitioners' borrowing was reported to RBI/CIBIL.

The petitioners availed financial assistance to an extent of Rs.1.50 crores from the UCO Bank/1st respondent. On 31.03.2011, the 1st respondent declared the account of petitioners as non-performing asset and the steps under the Securitization Act were initiated. The petitioner-company claims to have moved the Debts Recovery Tribunal, Hyderabad and the same is pending. The petitioners, it is alleged, to their shock and astonishment received the impugned communication dated 04.11.2011. As already noticed, the said communication has the effect of including the company, directors and guarantors as defaulters under clause 2.1 (b) of the Reserve Bank of India circular DBOD No.CID.BC.1/20.16/2011-12 dated 01.07.2011.

It is contended that the determination of petitioners as defaulters has serious civil consequences on the petitioners- company and the reputation of petitioners-company and its directors etc., are seriously eroded. The determination, communication to RBI/CIBIL and treating the account as defaulter is illegal and has affected the constitutional and statutory rights of the petitioners.

The petitioners in support of their *bona fide* actions refer to various incidental and ancillary circumstances in this behalf, but at the time of hearing, the learned senior counsel Sri L.Ravi Chander has confined his submission to the limited extent of violation of principles of natural justice and prayed for quashing the same and remanding the matter for fresh consideration by respondent bank.

The 1st respondent filed counter-affidavit and enclosed the master circular on willful defaulters dated 01.07.2011 issued by the Reserve Bank of India. The 1st respondent through pleading and also by relying upon the extant procedure contends that the case of petitioners has been considered as per the circular dated 01.07.2011, opportunity has been given by the Branch Grievance Redressal Committee and on verification of the status of account, the classification of petitioner-company either as defaulter or subversion of funds is justifiable.

I have perused the averments of both parties and also the material available on record.

The relationship of petitioners and respondent bank is one of banker and customer. The petitioner is the debtor of respondent bank. The Reserve Bank of India, for the purpose of uniform consideration of willful defaulters, issued circular dated 01.07.2011. This Court cannot sit as a Court of Appeal on the communication dated 20.07.2012 or examine the circumstances stated by the petitioners on the alleged default or that there is no subversion of funds and set aside the impugned communication. Further, at the time of hearing, the learned counsel appearing for the bank brought to the notice of the Court that the account is made over for realization under SARFAESI Act. Either way, with the subsequent development, the treatment of petitioners as defaulters cannot be interfered with.

The impugned communication refers to issuance of notice, receipt of reply from the petitioner and affording opportunity before the Grievance Redressal Committee.

The point for consideration is – whether the petitioner is classified as a defaulter for the available reasons or not. The conclusion on this aspect is dependant upon examination of the loan account of petitioners. As noted in the communication dated 20.07.2012, the petitioner failed to prove contrary and in the opinion of this Court, no exception to the conclusion in the impugned letter dated 20.07.2012 can be taken. In a transaction of this nature, the Court cannot also expect the respondent to consider the representation or reply like a quasi judicial authority and determine the issue. The respondent bank juxtaposed the requirements in the circular with the explanation given by the petitioner and a decision was accordingly taken. In my considered view, the petitioner failed to make out any case for grant of relief.

The writ petition is, accordingly, dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

S.V.BHATT, J

11th March, 2015
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