

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION No. 528 OF 2017

1. M/s. AMBEY IRON PRIVATE LIMITED,
having office at 701, Dempo Trade
Centre, 7th Floor, Patto Plaza,
Panaji, Goa – 403 001 and
Factory at E-1, MIDC, Chincholi,
Solapur – 413 255, Maharashtra (India),
represented herein by its Director,
SHRI AMAN LILA,
son of Pawan Lila,
Indian National, aged 27 years,
having address at 303-A, House of Lords,
Opp. Hotel Goa Marriott, Miramar,
Panaji, Goa – 403 001.

2. SHRI PAWAN LILA,
son of late Mahavir Prasad Lila,
Indian National, aged 54 years,
having address at 303-A, House of Lords,
Opp. Hotel Goa Marriott, Miramar,
Panaji, Goa – 403 001.

2. SHRI AMAN LILA,
son of Pawan Lila,
Indian National, aged 27 years,
having address at 303-A, House of Lords,
Opp. Hotel Goa Marriott, Miramar,
Panaji, Goa – 403 001.

... Petitioners.

Versus

PUNJAB NATIONAL BANK
through its Branch Manager,
having office at Calisto Mansion,
Dr. Pissirlekar Road,
Panaji, Goa – 403 001.

... Respondent.

Mr. Shivan Desai, Advocate for the petitioners.

Mr. Prashant Vengurlekar, Advocate for the respondent.

Coram :- F. M. REIS &

NUTAN D. SARDESSAI, JJ

Date : 03rd July, 2017.

ORAL JUDGMENT: (PER F.M. REIS, J.)

Heard Shri Shivan Desai, learned Counsel appearing for the petitioners and Shri P. Vengurlekar, learned Counsel appearing for the respondent.

2. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the respondents waives service.

3. The short point for consideration in the writ petition is whether the impugned order dated 29.11.2016 communicated on 06.04.2017 stands vitiated, whereby, the petitioners have been declared to be as wilful defaulters in terms of the Reserve Bank of India's circular dated 01.07.2015, as the petitioners were not afforded a personal hearing.

4. Mr. Shivan Desai learned Counsel appearing for the petitioners points out that the impugned order would cause civil consequences and, as such, the order stands vitiated as the principles of natural justice have not been followed. Learned Counsel further submits that in terms of clause 3(b) of the said circular, a Show Cause Notice had to be issued to the petitioners in case the committee concludes that the petitioners are wilful defaulters. Learned

Counsel further points out that the said clause also provides for personal hearing to be given to the borrowers/director of the concerned Corporation before taking a decision on the subject Show Cause Notice. Learned Counsel further points out that after the Show Cause Notice was issued and the reply was submitted by the petitioners, the respondent fixed a date for hearing on 06.06.2016 and, thereafter, the date of personal hearing was postponed. It is further pointed out that no new date was communicated to the petitioners of any personal hearing, but however, the respondent arbitrarily proceeded to pass the impugned order without affording a personal hearing to the petitioners. Learned Counsel further submits that the petitioners have a good case to point out that the petitioners are not wilful defaulters and as such the impugned order cannot be sustained and deserves to be quashed and set aside.

5. On the other hand, Mr. P. Vengurlekar, learned Counsel appearing for the respondents submits that the respondents are only obliged to serve a Show Cause Notice and it is within the discretion of the Committee to afford a personal hearing. Learned Counsel further submits that the petitioners are admittedly defaulters of the respondent Bank and as such the concerned committee was justified to declare the petitioners as wilful defaulters. Learned Counsel further submits that, in any event, in the reply filed by the

respondent at para 7, there are specific averments that the petitioners shall be given a personal hearing before taking a decision on the Show Cause Notice issued to the petitioners. Learned Counsel, as such, submits that the petition be accordingly rejected.

6. We have considered the submissions of the learned Counsel and we have also gone through the records. It is undisputed that the effect of the impugned order declaring the borrowers as wilful defaulters would cause civil consequences. In such circumstances, the petitioners are entitled for a hearing before taking such decision. In the present case, clause 3(b) of the said Circular dated 01.07.2015 reads thus:

"3. Mechanism for identification of Wilful Defaulters

The mechanism referred to in paragraph 2.5 above should generally include the following:

(a) ...

(b) If the Committee concludes that an event of wilful default has occurred, it shall issue a Show Cause Notice to the concerned borrower and the promoter/whole-time director and call for their submissions and after considering their submissions issue an order recording the fact of wilful default and the reasons for the same. An opportunity should be given to the borrower and the promoter/whole-time director for a personal hearing if the Committee feels such an opportunity is necessary."

The clause clearly stipulates that besides granting a Show Cause Notice, the borrowers are also entitled for a personal hearing before taking a decision to that effect if the Committee feels necessary. In the present case it is not disputed that no personal hearing was given to the petitioners before taking the impugned decision. Considering the reply filed, the Committee ought to have called the petitioners for clarifications and any decision thereon would result in serious consequences to the petitioners. On this short ground alone, the impugned order stands vitiated.

7. Apart from that, at para 7 of the reply of the respondent, the respondent has also shown its willingness to give a hearing to the petitioner before taking a decision in terms of the said Circular issued by the Reserve Bank of India. Hence, for the aforesaid reasons we find that the impugned order dated 29.11.2016 which was communicated by letter dated 06.04.2017 cannot be sustained and deserves to be quashed and set aside. However, the respondents, if so advised, shall proceed to decide the Show Cause Notice after given a personal hearing to the petitioners in accordance with law.

8. In view of the above, we pass the following:

ORDER

- i. The Impugned Order dated 29.11.2016 communicated by letter dated 06.04.2017 is quashed and set aside.

- ii. The respondents are directed to take a decision on the Show Cause Notice dated 20.08.2015 afresh after affording a personal hearing to the petitioners in the light of the observations made hereinabove and in accordance with law.
- iii. Needless to say, the merits of the rival contentions of the parties with that regard are left open.
- v. Rule is made absolute in the above terms.

NUTAN D. SARDESSAI, J.

F. M. REIS, J.

msr