IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **28.08.2017**

CORAM:

THE HONOURABLE MR.JUSTICE **S.MANIKUMAR**
and
THE HONOURABLE MRS.JUSTICE **V.BHAVANI SUBBAROYAN**

Cont.P.No.310 of 2017

S.Mahendran .. Petitioner

Versus

K.Elango,
Senior Manager,
Canara Bank, Srivilliputtur Branch,
Virudhunagar District. .. Respondents

Prayer: This Contempt Petition filed under Section 11 of the Contempt of Court Act, 70/71 to punish the respondents for having committed contempt of Court for disobeying the order dated 02.02.2016 and made in W.A.No.1698 of 2015.

For Petitioner : Dr.A.Thiyagarajan
for Mr.S.Ramesh Kumar
For Respondent : Mr.P.Raghunathan
for M/s.T.S.Gopalan & Co.

For RBI, Chennai : Mr.C.Mohan
for M/s.King & Partridge

ORDER

(Order of the Court was made by **S.MANIKUMAR, J.**)

Contending inter alia that there is willful disobedience of the order of this Court made in W.A.No.1698 of 2015 dated 02.02.2016, Contempt Petition No.310 of 2017, has been filed. On 12.06.2017, this

Court passed the following orders.

> *"Contending inter alia that order made in W.A.No.1698 of 2015 dated 02.02.2016 has not been implemented in letter and spirit, writ petitioner, S.Mahendran, the 3rd respondent in W.A.No.1698 of 2015, has filed the instant contempt petition.*
>
> *2. Going through the averments to contempt petition viz., Cont.P.No.310 of 2017 and the supporting documents, we permit Mr.S.Ramesh, Kumar, learned counsel for the contempt petitioners to serve the entire cause papers on Mr.K.Elango, Sr. Manager, Canara Bank, Srivilliputtur Branch, Virudhunagar District, respondent herein to revert on the averments and documents.*
>
> *3. We make it clear that notice permitted to be served on the respondent is not a statutory notice issued by this Court.*
>
> *4. Post on 03.07.2017"*

2. Thereafter on 06.07.2017, this Court, passed the following order:

> *"3. Arguments were also advanced by the learned counsel appearing for both parties that notice has to be issued to Reserve Bank of India for appropriate order.*
>
> *4. On this day, a revised calculation has been made by the petitioner that as on 31.03.2016, a sum of Rs.21,62,178/- is due and payable on the fixed deposit.*
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> *5. Though, Mr.Raghunathan, learned counsel for the bank reiterated the submissions stated supra, we direct*

Canara Bank, Srivilliputtur Branch, Virudhunagar District, the respondent herein to examine the revised calculation submitted to this Court. Post on 24.07.2017."

3. On 24.07.2017, this Court passed the following order:

"3. Mr.Raghunathan, learned counsel for the bank submitted that on the facts and circumstances of this case, if Reserve Bank of India, Chennai is directed to examine as to how an award of the Banking Ombudsman dated 31.08.2000 has to be interpreted, it would pave way, in settling disputes of similar nature.

4. Mr.S.Ramesh Kumar, learned counsel for the petitioner is also agreeable to the said submission.

5. On the facts and circumstances of the case and in exercise of the powers under Article 226 of Constitution of India, we deem it fit to order notice to the Reserve Bank of India, Chennai, through its competent authority. Accordingly, issue notice to the Reserve Bank of India, Chennai, through Court and privately, returnable in two weeks.

6. Mr.S.Ramesh Kumar, learned counsel for the petitioner shall serve entire cause papers including the affidavit, revised calculation and the counter affidavit filed by the Divisional Manager, Canara Bank, Thanjavur to Reserve Bank of India, Chennai.

7. Competent Authority, Reserve Bank of India, Chennai shall file a detailed counter affidavit, setting out the details as to how an award of the Banking Ombudsman dated 31.08.2000, has to be interpreted, on the facts and circumstances of this case.

8. Post after two weeks."

4. Pursuant to the direction, Assistant General Manager, Reserve Bank of India, has filed a counter affidavit, stating as follows:

> *"3. It is respectfully submitted on receipt of the complaint, the office of the Banking Ombudsman had sought comments from Canara Bank vide letter dated 31.3.1999. On 7.6.1999, Canara Bank replied stating that the loans were granted after due execution of documents by the complainant, the bank has got authority to renew deposits from time to time, it was for the borrower to clear the loan and that the bank has gone by the terms and conditions of the letter of pledge.*
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> *4. It is submitted that after receipt of the above reply on 9.6.1999, the office of the Ombudsman wrote to Canara bank on 17.7.1999 inter alia stating that the bank should have intimated the maturity of deposits and the bank should have kept the depositor / loanee informed about the interest debited to his account giving full details of the amount and rate charged from time to time. Canara Bank's attention was also drawn to the RBI circulars dated 21.10.1997 and 28.5.1998 on the subject and compliance was sought. From the circulars, two basic facts emerged namely that a change in rate of interest on loans requires pre negotiations with the loanee and the bank is obliged to charge interest at the contracted rate till the date of maturity of deposit. However, no compliance was reported by Canara Bank on the letter dated 17.7.1999.*
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> *5. It is submitted that in the light of the above, as provided under clause 19 of the Banking Ombudsman's Scheme*

1995, the following recommendations were made by the Banking Ombudsman.

a. The bank shall charge interest on loans asper the original contracted rate only.

b. The excess interest charged shall be refunded with interest at S.B. rate + 2%.

c. The Complainant shall be paid cost and expenses of Rs.1,000/-.

6. While the above recommendations made under clause 19 of the 1995 Scheme were accepted by the complainant vide their letter dated 10.5.2000, the same was not accepted by Canara Bank by their letter dated 3.6.2000. There upon in terms of the scheme, notice of award was issued on 16.6.2000 which was accepted by the complainant and not by the bank and hence award was passed on 31.8.2000 which details are as hereunder:

i. The bank shall charge interest on loans against FCNR/NRNR deposits as per the original contracted rate after rectifying the discrepancies pointed out by the complainant.

ii. The excess interest charged shall be recredited with interest at F.D.rate.

iii. The bank shall pay Rs.2000/- to the complainant for cost and expenses.

7. It is submitted that under the then scheme, acceptance of award needs to be communicated within one month by the complainant and on 19.9.2000, the complainant-the Petitioner herein conveyed his acceptance for the award. In such view, as per the Banking Ombudsman Scheme, 1995, the award was binding on the bank. If Canara Bank or the Respondent herein or his predecessors were not clear regarding *the terms of the award, they should have sought clarification at that relevant time itself, which they did not do. The award was clear with regard to the violations. Canara Bank was bound to implement the award after rectifying the discrepancies pointed out by the complainant in his letter dated 12.4.2000. This has not happened, Canara Bank chose to challenge the award in W.P.No.10799 of 2002 which came to be dismissed on 24.3.2015 and also confirmed in appeal on 2.2.2016. The very fact that the award of the Ombudsman was challenged after nearly two years was another point to be taken note of.*

8.It is respectfully submitted that independent of the above factual aspects as available in the records, the following may also be taken note of. In public interest and in the interest of Banking policy, the institution of Banking Ombudsman under the Banking Ombudsman's Scheme of 1995 was established for the "redressal of grievance against deficiency in banking services concerning loans and advances and other specified matters". Under the scheme, the award passed by the Ombudsman is required to be complied within one month from the date of receipt of award. The Banking Ombudsman becomes functus officio after passing th award and it was to inform Reserve Bank of India whether the award was complied with or not. Further the scheme has a statutory force and the award so passed has to be complied with in pursuance of the provisions of the scheme. This scheme was promulgated pursuant to the powers of the Reserve Bank under Section 35-A of the Banking Regulation Act, 1949. As per the 1995 Banking Ombudsman Scheme especially with regard to clause 20 pertaining to award, the same provides for reporting non-compliance and there was no provision for challenging the award. In the decision rendered by the Supreme

Court (2007) 5 SCC 120 (Durga Hotels case), the Apex Court has held that the Ombudsman at best was an Authority or Tribunal of limited jurisdiction constituted under the Scheme. Such Ombudsman was only a non-adversarial adjudicator of disputes.

9. It is respectfully submitted that in view of the above, the award passed by the Banking Ombudsman has the effect of a statutory direction and Canara bank was duty bound to comply with such statutory direction. In respect of re-examination of the Banking ombudsman award dated 31.8.2000 for the purpose of interpreting its terms, the following points merit consideration.

(i) The award was passed after taking into account the submissions of both parties and the complainant had consented to the award.

(ii) The award implicitly agrees with the claims of the complainant in his letter dated 12.4.2000 and explicitly directed the bank to rectify the deficiencies pointed out therein.

(iii) The subject matter of the complaint / award pertained to a complaint which was received 17 years back. The related papers based on which the Banking Ombudsman has arrived at the rationale of the award are not available in the file. In the absence of these working papers it would be difficult to the present Banking Ombudsman to interpret / re-examine the award for implementation by the abnk.

(iv) Banking Ombudsman Scheme 2006 as amended up to date, does not have any enabling provision for the present Banking Ombudsman to reopen / reexamine for re-interpreting the case decided by way of award passed by previous Banking Ombudsman.

(v) There is also an issue of revised calculations

towards the claims raised by the complainant and the counter claims / calculations by the bank for the period subsequent to the passage of award and its implementation about which the Office of the Banking Ombudsman, Chennai has no knowledge and they would be outside the scope of the interpretation of the original award dated 31.8.2000.

(vi) Alternatively this Hon'ble Court may be pleased to direct Canara Bank to refer the matter to their Internal Ombudsman for the purpose of implementation of the Award and amicable settlement of the petitioner's claim. Internal Ombudsman are appointed vide instructions of RBI in May 2015 (RBI Circular Ref.DBR.Co.Leg.No.-/09/07.005/2014-15 dated May 11, 2015 and procedural instructions for redressal grievances were issued in July 2015 (RBI Circular No.CEPD.CO.PRS.-/13.01.01/2015-16 dated July 15, 2015) and January 13, 2016 (RBI Circular No.CEPD.CO.PRs./5064/13.01.001/2015-16 dated January 13, 2016). (Copies enclosed) In terms of aforesaid procedural instructions, the concerned banks are required to examine the customer grievances as per their internal grievance redressal mechanisam and in case the bank decides to either reject a complaint and / or decides to provide only partial relief to the complainant, it should invariably forward such complaints to their Internal Ombudsman for further examination. Retired Officials of other Scheduled Commercial Bank in the rank of General Manager / Deputy General Managers are required to be appointed as Internal Ombudsman."

5. Mr.C.Mohan, learned counsel for Reserve Bank of India, made

submission on the basis of the above and prayed for a direction to Canara Bank, respondent herein to refer the matter to the Internal Ombudsman (I.O.) for the purpose of implementation of the award and for amicable settlement.

6. On 23.08.2017, we passed the following orders:

"Mr.R.Raja Mohan, Assistant General Manager, Reserve Bank of India, has filed a detailed affidavit, setting out the procedure as to how an award passed by Banking Ombudsman has to be implemented. Deponent has also submitted that there is an internal ombudsman in Canara Bank, for the purpose of implementation of the award and amicable settlement. Reference has also been made to the RBI Circulars and procedural instructions at paragraph No.9(vi) of the affidavit filed on behalf of Reserve Bank of India.

Mr.A.Thiyagarajan, learned senior counsel for the contempt petitioner is agreeable for the reference to the internal ombudsman, Canara Bank, referred to in para.9(vi) of the affidavit.

Mr.Raghunathan, learned counsel for the Canara Bank seeks time to get instructions.

Post on 28.08.2017, immediately after admission."

7. On this day, when the matter came up for further hearing, on instructions, Mr.P.Raghunathan, learned counsel for Canara Bank submitted that suggestions of Reserve Bank of India, at Paragraph No.9(vi), is

acceptable, to Canara Bank and that the matter be referred to the bank's internal ombudsman, for the purpose of implementation of the award and amicable settlement. Earlier on 23.08.2017, we have recorded the submission Dr.A.Thiayagarajan, learned senior counsel for the contempt petitioner, with reference to internal ombudsman, Canara Bank. Today, bank's counsel has accepted to the suggestion, extracted supra.

8. Today, Mr.C.Mohan, learned counsel for the Reserve Bank of India, submitted that to provide Customer's service and to ensure the same, Canara Bank, has appointed Shri Laxminarayana Rao, as the Internal Ombudsman (I.O.) for Canara Bank.

9. At this juncture, on the aspect of charging interest, the binding effect of circulars issued by Reserve Bank of India, we deem it fit to consider the decision of the Hon'ble Apex Court in **Canara Bank Vs P.R.N.Upadhyaya and Others,** reported in (1998)6 SCC 526 at paragraph Nos.7 and 11, wherein, the Hon'ble Apex Court held as follows :

> *"7. Dealing with issue No. 4, the learned Ombudsman opined:*
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> > *"As regards the fourth point that the bank had charged interest to the loan accounts in excess of the contracted rate and that too at quarterly rests. It has failed to substantiate and establish that the interest charged in the accounts was in conformity*

with the Reserve Bank of India directions more specifically the R.B.I. Circular No. DBOD.NO.BL.B.C. 60/22.01.0003/ 94 dated 17.5.1994. As per this circular it is clear that the bank can charge interest only at a rate contracted at the time of sanction of the loan and the bank is not entitled to vary the rate of interest whenever there is a change in the interest rate for term loans. I therefore, hold this point in favour of the complainant."

11. That the circulars issued by the Reserve Bank of India under Section 21 or 35 of the Banking Regulation Act, 1949 are statutory in nature and are required to be complied with by the banks is not in any doubt. An Ombudsman appointed under the Scheme is obliged to regulate the working of the banks and issue directions to them to carry out the directions and circulars issued by the Reserve Bank of India under Section 21 or 35 of the Act. The view taken by the learned Ombudsman to the effect that the loans granted by the banks to their landlords for construction/renovation of premises which are taken on lease or rent by the banks cannot be termed as "term loans", as in the words of the learned Ombudsman "only those loans which are taken for commercial purposes can be construed to be term loans", is clearly erroneous and does not appeal to us."

10. On the role and position of an Ombudsman, in **Durga Hotel Complex Vs Reserve Bank of India and Others,** reported in **(2007)5 SCC 120** at paragraph Nos.8,9,14,17 and 18 the Hon'ble Apex Court held as

follows :

"8. Before we proceed to deal with the arguments, we will notice the relevant provisions. Under Section 35A of the Banking Regulation Act, 1949, the Reserve Bank of India has the power to issue directions to banking companies generally or to any banking company in particular, as it deems fit, and the banking companies shall be bound to comply with such directions. The Reserve Bank of India could, on its own motion or on representation made to it also modify or cancel any direction it had earlier issued. In consonance with this power, on 14.6.1995, the Reserve Bank of India notified the Banking Ombudsman Scheme, 1995. We think it profitable to extract the relevant notification herein:

"NOTIFICATION

Ref. RCPC NO.1 070/BOS-94-95 14th June, 1995

In exercise of the powers conferred by Section 35A of the Banking Regulation Act, 1949 (10 of 1949), Reserve Bank being satisfied that it is necessary in public interest and in the interest of banking policy to provide for a system of Banking Ombudsman for redressal of grievances against deficiency in banking services, concerning loans and advances and other specified matters hereby directs that all commercial banks should comply with the Banking Ombudsman Scheme, 1995 annexed hereto.

Sd/-
(R.V. Gupta)
Deputy Governor"

9. By a notification dated 15.6.1995, the Scheme was also extended to Scheduled Primary Cooperative Banks. Admittedly, the Scheme so notified, was in force at the relevant time. As per clause 2, the object of the Scheme was to enable *resolution of complaints relating to provision of banking services and to farilitate the satisfaction, or settlement of such complaints. Under clause 4 of Chapter II, the Reserve Bank of India could appoint a Banking Ombudsman to carry out the functions entrusted to him by or under the Scheme. The Banking Ombudsman was to hold office during the pleasure of the Governor of the Reserve Bank of India. Chapter III dealt with the jurisdiction, powers and duties of the Banking Ombudsman. Clause 12 provided that the Banking Ombudsman had the power and duty to receive complaints relating to the provision of banking services and to consider such complaints and facilitate their satisfaction, or settlement by agreement, by making a recommendation, or Award in accordance with the Scheme. Clause 13 specified that as regards banking services, the authority of the Banking Ombudsman would include all complaints concerning deficiency in service such as, nonpayment/inordinate delay in the payment or collection of cheques, drafts/bills etc. The other deficiencies that could be looked into on a complaint are enumerated in clauses (ii) to (ix) to sub-clause (a) of Clause 13. ……*

14. There is a more fundamental aspect. The Ombudsman, at best, is an Authority or Tribunal of limited jurisdiction constituted under the Scheme. It is a jurisdiction conferred by the Scheme. The exercise of jurisdiction or power by the Ombudsman would depend on his having jurisdiction not only to entertain a claim but also to bring it to an end. The continued exercise of power by him would depend on his continuing to have jurisdiction. Once he is deprived of his jurisdiction or gets deprived of his jurisdiction over the subject matter, he could no more proceed with a complaint which was earlier filed. In other words, to render an Award valid in terms of the Scheme, the Ombudsman must continue to retain *jurisdiction over the subject matter of the concerned complaint. A complaint goes out of his purview when the subject matter of it is taken to a Court, Arbitrator, Tribunal or forum. The relief that can be granted by the Ombudsman are limited and confined to the matters coming within clause 13 of the Scheme. The intention behind incorporating clause 16(3)(d) appears to be to ensure that the relief an Ombudsman may give, may not conflict with a more comprehensive adjudication by a Court, Arbitrator, Tribunal or forum with wider powers. When there is conferment of a power on an authority or Tribunal with limited jurisdiction, that conferred power must continue to exist, when the decision is rendered by that authority or Tribunal. Once the conferred authority or power is taken away or impeded, the Authority or Tribunal can no more exercise it. This will be the position when one of the parties in a complaint before the Ombudsman takes the subject matter to a Court, Arbitrator, Tribunal or forum. In other words, when ultimately he is about to pronounce his Award, the Ombudsman finds that the subject matter of the dispute has been taken to the Debts Recovery Tribunal or a Civil Court or an Arbitrator or to any other competent forum, he gets divested of his jurisdiction, on a harmonious reading of clause 16(1) with clause 16(3)(d) of the Scheme. It is not, as if, a bar of jurisdiction can occur only at the stage of initially entertaining a claim. It could also occur at a subsequent stage either in view of the jurisdiction being taken away or in view of any other impediment created by the very Legislation, Rule or Scheme that conferred the initial jurisdiction. Thus, having lost his jurisdiction over the complaint in view of clause 16(3)(d) of the Scheme, the Ombudsman will have to decline jurisdiction to pass any order or award on the complaint. This, we think would be the proper way of understanding the bar created by clause 16(3)(d) of the Scheme.*

15. Conceptually, an Ombudsman is only a non-adversarial adjudicator of disputes. An Ombudsman by definition is only

[a]n official appointed to receive, investigate, and report on private citizens complaints about the government; a similar appointee in a non-governmental organisation (such as a company or university). (See Blacks Law Dictionary).

He serves as an alternative to the adversary system for resolving disputes, especially between citizens and government agencies. He is an independent and non-partisan officer who deals with specific complaints from the public against the administrative injustice and mal-administration. (See 4 American Jurisprudence 2d). Therefore, by its very nature, an Ombudsman is an alternative to an adversary system for resolution of disputes. When the subject matter of a complaint before the Ombudsman under the Scheme is taken to a Court, Tribunal, Arbitrator or other competent forum, the subject matter is taken away from the purview of the Ombudsman to an adjudicatory forum under an adversarial system. It is therefore logical to understand clause 16 of the Scheme with particular reference to subclause 3(d) thereof, that on one of the parties approaching an adjudicatory forum on an adversarial system, the non-adversarial adjudicator, the Ombudsman must lose his power or authority to bring about a resolution of the complaint by way of a non adversarial adjudication. An Ombudsman is not defined in the Banking Regulation Act, 1949 or in the Banking Ombudsman Scheme 1995 constituting him as adversarial adjudicator. Clause 12 of the Scheme constitutes him a facilitator to bring about a satisfaction of the complaint, in one of the modes referred to therein. An adversarial adjudication necessarily stands on a higher plane than a settlement of a complaint at the instance of an Ombudsman. When such a *forum for adversarial adjudication of disputes takes seisin of the subject matter of a complaint, it will be logical to postulate, on an interpretation of clause 16 of the Scheme, that the Ombudsman loses his jurisdiction over the subject matter of the complaint and consequently the complaint itself.*

17. After all, a complainant before the Ombudsman like the appellant will not be prejudiced by this interpretation. It has now been clarified in United Bank of India, Calcutta v. Abhijit Tea Co. Pvt. Ltd. & ors.1 that the expression counterclaim in sub-Sections (8) to (11) of Section 19 of the Recovery of Debts Act will take in even a claim for damages based on the same transaction and would include even an independent claim the respondent before the Debts Recovery Tribunal may have against the claimant Financial Institution. It has thus been held that a counter-claim in a wide sense will lie before the Debts Recovery Tribunal and the respondent will be entitled to raise a comprehensive counter-claim. This ratio has also been accepted subsequently in State Bank of India v. Ranjan Chemicals Ltd. & Anr.2 It is therefore obvious that the appellant can make all his claims before the Debts Recovery Tribunal while defending the claim of the Bank, including the ones he has put forward before the Banking Ombudsman.

18. Then the question is whether the subject matter of the complaint came within the purview of the Banking Ombudsman. Clause 13(b) of the Scheme indicates the jurisdiction of the Ombudsman. Clause (b) provides that he could entertain complaints concerning loans and advances only insofar as they relate to non-observance of the directives of the Reserve Bank of India on interest rates, delays in sanction/non-observance of prescribed time schedule for disposal of loan applications and non-observance of any other directions or instructions of the Reserve Bank of India, as may be specified *for the purpose of the Scheme from time to time. It is seen, as found by the High Court, that there was no claim that the respondent Bank was guilty of nonobservance of any directive of the Reserve Bank of India on interest rates. There is also no case that any other direction or instruction of the Reserve Bank of India made for the purpose of the Scheme had not been observed by the respondent Bank. At best, the appellant can claim that it was complaining of delay in sanction/non-observance of prescribed time schedule for disposal of its loan application for additional finance. Even here, the case of the respondent Bank is that there was no time schedule prescribed for enhancing the limit of the loan or for granting additional loan to a hotel industry like the one for which the appellant was claiming a loan from the Bank and hence there was no question of any of the complaints of the appellant coming within the purview of the Banking Ombudsman. A reading of the Award of the Banking Ombudsman shows that the directions issued by him regarding the advancing of the balance amount of Rs.3,41,250/- out of the original loan of Rs. 15 lakhs sanctioned, his direction to the Bank to make available additional finances merely on the basis of the recommendation of the Committee in that behalf and his directing the maintaining the financing ratio of 75:25 and his fixing a repayment schedule as seven years exclusive of one year of moratorium and the enhancement of the period of moratorium consequent on non-disbursement of the loan amount by the respondent Bank, are all outside Clause 13(b) of the Scheme and consequently outside the jurisdiction of the Banking Ombudsman. The Banking Ombudsman has no authority to compel the Bank to make further advances which as a prudent banker it might not find feasible. Nor can the prior conduct in respect of the repayment of the loan which the Bank had already granted."*

11. Placing on record the submissions of the learned counsel for the parties, Canara Bank, Srivilliputtur Branch, Virudhunagar District is directed to refer the matter to the Internal Ombudsman, for the purpose of implementation of the award, as per RBI guidelines and for amicable settlement of the claim, made in the contempt petition.

12. On receipt of the reference by Canara Bank, Srivilliputtur Branch, Virudhunagar District, the Internal Ombudsman, shall address the grievance of the contempt petitioner, in accordance the Internal Grievance Redressal Mechanism, and other guidelines / instructions provided therefor, as mentioned, in paragraph No.9(vi) of the affidavit, filed by the Assistant General Manager, Reserve Bank of India, Chennai. While doing so, the Internal Ombudsman (I.O), Canara Bank, shall provide an opportunity of personal hearing to the contempt petitioner, as well. Internal ombudsman, Canara Bank, shall complete the exercise within four weeks, from the date of reference.

13. With the above directions, Contempt Petition is disposed of. No costs.

[S.M.K., J.] [V.B.S., J.]
28.08.2017

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