IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA no.276 of 2017 (O&M)
Date of Decision : 06.03.2017

State Bank of Patiala

....Appellant(s)

Versus

M/s Moser Baer Solar Limited

...Respondent(s)

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE DR. SHEKHER DHAWAN

Present : Mr.Anand Chibber, Sr. Advocate with
Mr. A.K.Ahuja, Advocate for the appellant

Mr. Manish Jain, Advocate for caveator

MAHESH GROVER, J.(ORAL)

This appeal is directed against the judgment of the learned Single Judge dated 7.10.2016.

The respondent who is on caveat is confronted with proceedings by the Bank to identify a wilful defaulter in terms of the master circular on wilful defaulters governing the procedure to identify them which binds the Bank to a mechanism which we may extract herebelow:-

> "(a) The evidence of wilful default on the part of the borrowing company and its promoter/whole time director at the relevant time should be examined by a Committee headed by an Executive Director or equivalent and consisting of two other senior officers of the rank of GM/DGM.

(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.

(c) The order of the Committee should be reviewed by another Committee headed by the Chariman/Chairman & Managing Director or the Managing Director & Chief Executive Officer/CEO's and consisting in addition to two independent directors/non-executive directors of the bank and the Order shall become final only after it is confirmed by the said Review Committee. However, if the Identification Committee does not pass an order declaring a borrower as a wilful defaulter, then the Review Committee need not be set up to review such decisions."

After the initial exercise, the appellant- Bank issued a notice to the respondent-borrower in terms of the aforesaid mechanism to which he replied and intending to supplement his initial reply with more documents not in his possession but with the Bank he rushed to this Court by way of a writ petition resulting in the impugned order where the learned Single Judge without issuing notice to the appellant- Bank directed them to supply the documents to the respondent and also fixed a time frame for the proceedings which is now a cause of grievance to the appellant who contends that apart from the fact that the respondent had no occasion to rush to the Court, the directions have been passed without hearing them and without taking into consideration the process prescribed in master circular to identify wilful defaulters.

Apart from the prejudice pleaded on account of an ex parte decision, learned counsel for the appellant has also stated that the prayer for additional documents and the prayer of the respondent to be represented by a counsel was impermissible and the judgments relied upon by the learned Single Judge have been mis-construed.

We have heard learned counsel for the appellant and have perused the impugned judgment.

The appellant may be right in raising a contention that there was no occasion for the respondent to rush to the Court within days of making a request to the Bank when the same had not been declined and at best writ petition ought to be dismissed as pre-mature as there is nothing adverse to the respondent but on a further examination we do not find any prejudice caused to the appellant on this count for the reason that innocuous directions to supply the documents have been given with a further mandate to conclude the process within a time bound manner which in fact enhances the concerns of the Bank to identify the wilful defaulters. It is a settled law that unless prejudice manifests itself every violation of a process questioned by a litigant does not need redressal and the Courts would be hesitant to interfere with it. Finding no such prejudice we would unhesitatingly decline the prayer of the appellant in this regard but noticing that the respondent faces a process to identify and establish him as a wilful defaulter, we would revise the time frame as directed by the learned Single Judge to further narrow it down particularly when both the parties have accepted this course. Consequently, we direct that the appellant -Bank shall disclose all the documents that it has in its possession to the respondent within one week commencing from 9.3.2017 whereafter the respondent shall supplement his earlier reply within one week thereafter. The Committee shall then conclude the process of identification after considering the original reply as also the supplemented one within 15 days of the submission of the reply. It is made clear that neither the Bank nor the respondent shall be at liberty to vary any of the terms of the order.

Dealing with the last submission that the counsel was not enabled to make a representation on behalf of the respondent, we make it clear that without getting into the legality of this issue, the appellants would treat this as a representation by the respondent itself, particularly, when the same has not been disowned by it.

With the aforesaid observations, the instant appeal is disposed of. However, delay of 79 days in filing the appeal is hereby condoned in the interest of justice and for the reasons given in the application.

(Mahesh Grover)
Judge

06.03.2017 **(Shekher Dhawan)**
rekha **Judge**
Whether speaking/reasoned Yes/No
Whether reportable Yes/No