

***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

**THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND**

THE HON'BLE MS.JUSTICE J. UMA DEVI

+ WRIT PETITION No.23570 OF 2018

% Date:27.11.2018

Between:

Paladugu Mangamma Memorial Trust,
Srampalli Vilalge, Vijayawada, Krishna Dist.

... Petitioner

v.

\$ Indian Overseas Bank,
Head Office, Anna Salai,
Chennai, Rep. by its Chairman
And Managing Director and others

.. Respondents

! For Petitioner : M/s. P. Roy Reddy

^ For Respondents : Mr. E. Madan Mohan Rao

< Gist :

> Head Note :

? Cases Referred : Nil

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HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE MS.JUSTICE J. UMA DEVI

WRIT PETITION No.23570 OF 2018

ORDER: *(Per V. Ramasubramanian, J)*

Challenging the measures taken under Section 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Securitisation Act') and the action of the Bank in treating them as a non-performing asset, the borrower has come up with the above writ petition.

2. Heard Mr. P. Roy Reddy, learned counsel for the petitioner and Mr. E. Madan Mohan Rao, learned counsel for the Bank.

3. The petitioner availed a term loan on 02.05.2008. The rate of interest fixed under the contract was co-relatable to what is known as BPLR (Benchmark Prime Lending Rate) System. It appears that the Reserve Bank of India issued a circular bearing DBOD No. DIR. BC 88/13.03.00/2009-10, dated 09.04.2010, directing the Banks to switch over from BPLR system to the system of Base Rate.

4. It appears that the loan originally sanctioned on 02.05.2008 was restructured in the year 2013. But, while restructuring also, the Bank applied a rate of interest on the basis of BPLR system and not on the basis of the system of Base Rate. The petitioner did not raise an objection and hence, the payments continued.

5. However, after coming to know of the RBI circular dated 09.04.2010, the petitioner raised an issue in May 2015 that the interest charged to him was on BPLR system and that the same was in violation of the circular. Conceding the same, the Bank appears to have refunded some amount giving benefit to the petitioner of the new system with effect from 01.04.2015.

6. Thereafter, the account was classified as non-performing asset in the year 2017 and a demand notice under Section 13 (2) of the Act was issued on 04.10.2017 followed by a possession notice dated 27.06.2018 under Section 13 (4) of the Act. It was at this stage that the petitioner has come up with the above writ petition challenging the very action of the respondents in treating the petitioner's account as a non-performing asset.

7. Mr. E. Madan Mohan Rao, learned counsel for the Bank raised a preliminary objection to the maintainability of the writ petition on the ground that the petitioner can as well file an appeal under Section 17 of the Securitisation Act, and raise all these issues. But, the case on hand revolves around a pure and simple question of law. Therefore, at this stage, we do not wish to drive the petitioner to the Tribunal to have this legal issue settled. There are no disputes on facts. Therefore, the preliminary objection is overruled.

8. The main contention of Mr. P. Roy Reddy, learned counsel for the petitioner is that the circular dated 09.04.2010 issued by the Reserve Bank of India has statutory force and that therefore, at least at the time of restructuring of the loan, the Bank ought to have applied

the Base Rate system. According to the petitioner, the borrowers like him were not put on notice of the circular dated 09.04.2010 and that had they been put on notice they would have exercised an option even at that time when the contract was in force. Therefore, the grievance of the petitioner is that the benefit of the circular dated 09.04.2010 should be made applicable either with effect from 01.07.2010 or at least with effect from the date on which the loan was restructured in the year 2013.

9. The contention that the circulars issued by the RBI have statutory force, is beyond any pale of doubt. Section 35 A of the Banking Regulations Act, 1949, gives a mandate to the Reserve Bank of India to issue directives and these directives are binding upon the Banks. That the law is so, is declared by several decisions of the Supreme Court, of which notice may be taken of the one in **Sardar Associates v. Punjab & Sind Bank**¹.

10. Having taken note of the legal position, let us now take a look at circular dated 09.04.2010.

11. The circular dated 09.04.2010 issued by the RBI, gives a positive mandate to the Banks to switch over from BPLR system introduced in the year 2003 to the Base Rate system. Under Clause - xiii of the said circular, the guidelines issued therein have to become effective from 01.07.2010. Under Clause - i, the circular mandated that the Base Rate system will replace the BPLR system with effect

¹ (2009) 8 SCC 257

from 01.07.2010. Banks were directed under Clause - ii of the circular to determine their actual lending rates on loans and advances with reference to the Base Rate. Clause - v of the circular prescribed that all categories of loans should be priced from the date of coming into effect of the circular, only with reference to the Base Rate. However, certain categories of loans such as DRI Advance, loans to Banks own employees and loans to Banks depositors against their own deposits were exempted.

12. Clause - xi of the circular is what is important for determination of the issue on hand. Hence, it is extracted as follows:

“xi. The Base Rate system would be applicable for all new loans and for those old loans that come up for renewal. Existing loans based on the BPLR system may run till their maturity. In case existing borrowers want to switch to the new system, before expiry of the existing contracts, an option may be given to them, on mutually agreed terms. Banks, however, should not charge any fee for such switch-over.”

13. It is seen from Clause - xi of the circular extracted above, that insofar as the loans that were in currency, the borrowers were required to exercise an option to switch over to the Base Rate system. But insofar as loans that come up for renewal, the new system was to be made applicable.

14. In the case on hand, the term loan given to the petitioner got restructured in the year 2013. Restructuring of a loan would tantamount to a fresh contract coming into force or at least a novation

of the old contract taking place. Therefore, what applies to a case of renewal, would apply to a case of restructuring also.

15. There are two periods involved in the case on hand. The first is the period from 01.07.2010, the date of coming into force of the RBI circular upto the year 2013, when the restructuring took place. The second is the period commencing from the date of restructuring. Insofar as the first period, namely, from 2010 to 2013 is concerned, the claim of the petitioner is that they were not put on notice of the RBI circular. But unfortunately, if RBI circular is construed to have statutory force in terms of Section 35 A, no individual notice is required. Therefore, by the very argument on which the petitioner stands, the petitioner cannot succeed in respect of the initial period.

16. But, insofar as the second period is concerned, the moment a new contract comes into play, the Bank cannot prescribe a rate of interest relatable to BPLR system on the basis of an agreement reached between the parties. If RBI circular has statutory force, the parties who were bound cannot contract out of the statute. Therefore, the Bank ought to have applied the new system at least from the date of restructuring.

17. The only defence taken by the Bank in their counter affidavit is that the petitioner did not opt to switch over to the new system even at the time of restructuring. But, we do not think that Clause - xi obliges parties to exercise options at the time of renewals and at the time of coming into existence of new contracts. If new contracts are born upon renewal, there can be no doubt that a new

contract is born upon restructuring. The terms and conditions of such a contract cannot travel beyond Clause - xi of the RBI circular.

18. In view of the above, the writ petition is allowed, the impugned measures are set aside and the Bank is directed to prepare a fresh statement of liability, applying the RBI circular dated 09.04.2010 with effect from the date of restructuring. If after finding out this liability, the petitioner will still fall under the category of non-performing asset, it is open to the Bank to issue a fresh demand notice.

As a sequel thereto, miscellaneous petitions, if any pending, shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J

November 27, 2018
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