

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

W.P. 22095 of 2010

M/s. Rasi Silk Industries Ltd.,
represented by its Authorised
Signatory,
Mr.Jairam,
1, Sannadhi Street,
Mylapore,
Chennai-600 004.

..... Petitioner

Versus

1. The Reserve Bank of India,
Department of Banking Supervision,
Fort Glacis, Rajaji Salai,
Chennai-600 001.
2. Indian Bank,
rep. by its Asst. General Manager,
21, North Mada Street,
Mylapore,
Chennai-600 004.
3. Indian Bank,
Rep. by its General Manager,
Recovery Department,
Head Office, 66, Rajaji Salai,
Chennai-600 001.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent culminating in its letter dated 20.07.2010 in Ref.No.DBS(Che)/Complaint/163/03.01.19/2009-2010 rejecting the complaint dated 19.12.2009 made by the petitioner about overcharging of interest by the 2nd and 3rd respondents at the time of One Time Settlement (OTS) by the petitioner of its dues to the 2nd and 3rd respondents and to quash the same and consequently to direct the 2nd and 3rd respondent to follow the OTS sanction and refund the excess interest charged.

For Petitioner : Mr.T.R.Raj Kumar for
M/s.Ram and Rajan and Associates

For Respondents : M/s.R.Subrahmanyam Associates,
for R1

Mr.M.Balachandar for R2

O R D E R

This Writ Petition has been filed challenging the order passed by the 1st respondent Reserve Bank of India rejecting the petitioner's complaint regarding violation of One Time Settlement agreement entered between the petitioner and the 2nd respondent.

2. The brief facts leading to the filing of this Writ Petition is as follows :-

The petitioner has borrowed loan from the 2nd respondent Bank, and there was an outstanding to the tune of Rs.2003.61 lakhs. Then, the petitioner and the 2nd respondent has entered into an one time settlement agreement on 15.02.2006. As per the One Time Settlement agreement, the 2nd respondent Bank agreed to receive a sum of Rs.1050.00 lakhs and the said amount should be paid in three instalments. The first instalment is Rs.250.00 lakhs to be remitted within 15 days from the date of acceptance of the proposal, and a sum of Rs.500.00 lakhs to be paid on or before 31.03.2006, the balance amount of Rs.300.00 lakhs should be paid on or before 30.04.2006. So far as the payment of interest is concerned, it is agreed that the interest at BPLR (presently 11%) simple, on balance One Time Settlement amount, on running balance after expiry of 90 days from the date of communication of the sanction order till the date of final payment to be paid. The above proposal was agreed by the parties.

3. The grievance of the petitioner is that as per the One Time Settlement agreement, the parties have agreed that the interest rate can be levied after expiry of 90 days from the date of communication of the sanction order till the final payment. The sanction order has been communicated on 15.02.2006, the petitioner is liable to pay the interest only from 16.05.2006, but the 2nd respondent has calculated the interest from 15.02.2006. Even though the petitioner has made several representations to the 2nd respondent seeking to refund the

excess interest collected from him, there is no response from the 2nd respondent. In the above circumstances, the petitioner has filed a complaint dated 13.10.2008 before the 1st respondent. The complaint has been rejected by the 1st respondent on the ground that as per the One Time Settlement agreement entered between the parties, the petitioner has agreed for terms and conditions, and also paid the amount. Now, the petitioner cannot raise any dispute over the same. Further, the 1st respondent has directed the 2nd respondent to furnish the details of calculation of interest charged by them. Now, challenging the said order passed by the 1st respondent, the present Writ Petition has been filed.

4. The 1st respondent has filed a counter affidavit stating that the dispute between the parties is civil in nature, and if at all, any breach or dispute under the One Time Settlement agreement, the petitioner can only file a suit before the civil court to establish his right by letting evidence, and he cannot maintain the Writ Petition. Since the Writ Petition involves in the dispute on the question of facts, which cannot be examined under Art. 226 of Constitution of India.

5. The learned counsel appearing for the petitioner would submit that even though the parties have agreed for One Time Settlement terms, as per the sanction order, the Settlement is that the interest should be claimed only after the expiry of 90 days from the date of communication of the sanction order. But, the 2nd respondent has calculated the interest from the date of sanction order dated 15.02.2006, which is total violation of the agreement, and there is no factual dispute involved in this case. The learned counsel has further contended that even though the petitioner has paid the amount as per the agreement, he has every right to challenge the action of the 2nd respondent, as it is against the terms agreed between the parties.

6. Mr.M.Balachandar, learned counsel appearing for the 2nd respondent would contend that originally, the One Time Settlement was sanctioned on 15.02.2006 with the schedule for payments, but the petitioner did not follow the same, subsequently, he has asked for extension of time for payment. Considering his request, the 2nd respondent has extended time by an order dated 31.05.2006 for the payment of balance amount. In the extension order, it was clearly stated that the petitioner should pay BPLR simple interest at the rate of 11.5% from the date of communication of One Time Settlement sanction order till the date of final payment. The petitioner has also agreed for the above condition, and he has also paid the entire amount in the year 2006. Now, after four years, the present Writ Petition has been filed alleging that there is a discrepancy in payment

of interest. In view of the subsequent order passed by the 2nd respondent dated 31.05.2006, which was agreed by the petitioner, and also paid the amount, now, it is not open to the petitioner to dispute the payment of interest. If at all, any dispute arises under the agreement between the parties, the petitioner can only approach the Civil Court for redressal and he cannot maintain a Writ Petition under Art. 226 of Constitution of India. That apart, the Writ Petition also liable to be dismissed on the ground of laches.

7. I have considered the submissions made by learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents and perused the materials available on record carefully.

8. The grievance of the petitioner is that, excess interest has been collected from the petitioner in breach of agreement entered between the parties. Hence, the excess amount paid by the petitioner should be refunded. The dispute arises under the agreement between the parties on a One time settlement scheme, and the parties have agreed for certain terms, as per the agreed terms, the petitioner has also paid the entire amount as early as 2006. After four years, the petitioner has come up with the present Writ Petition, with a grievance that there is a violation of agreement condition regarding payment of interest. If at all, there is any breach or dispute under the one time settlement agreement, the remedy available to the petitioner only before the civil forum, and he cannot maintain a Writ Petition under Art. 226 of Constitution of India.

9. The 1st respondent also rightly held that there is an agreement between the parties, and the parties have agreed for certain terms, and it is not open to the petitioner to dispute the same. That apart, even on merits also, as per the original sanction order dated 15.02.2006, the petitioner should pay the interest after expiry of 90 days from the date of communication of sanction. Subsequently, at the request of the petitioner, the terms has been modified by an order dated 31.05.2006, by the 2nd respondent directing the petitioner to pay interest at the rate of 11.5% from the date of communication of One time settlement sanction till the date of final payment. The petitioner has also agreed for the above said condition and paid the amount. Now, it is not open to the petitioner to state that the interest has been imposed on violation of condition imposed in the original sanction order, and the 1st respondent rightly refused to entertain the complaint given by the petitioner, there is no illegality in the order passed by the 1st respondent, and I find

no merit in the Writ Petition. Accordingly, this Writ Petition stands dismissed. No costs.

Sd/-
Asst.Registrar (CJ conf)

/true copy/

Sub Asst. Registrar

rpp

To

1. The Reserve Bank of India,
Department of Banking Supervision,
Fort Glacis, Rajaji Salai,
Chennai-600 001.
2. The Asst. General Manager,
Indian Bank,
21, North Mada Street,
Mylapore,
Chennai-600 004.
3. The General Manager,
Indian Bank,
Recovery Department,
Head Office, 66, Rajaji Salai,
Chennai-600 001.

+1 cc to M/s.Ram & Rajan Advocate sr83923
+1 cc to Mr.M.Balachandar Advocate sr84282
+1 cc to Mr.G.B.Sabaridas Advocate sr84080

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mr(co)
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