BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **22.10.2019**

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P(MD)Nos.13548 to 13550 of 2019
and
W.M.P.(MD)Nos.10091 to 10099 of 2019

1.Mr.Pankaj K.Patel
2.Ashok R.Patel .. Petitioners in W.P.(MD)No.13548/19

1.Mr.Pankaj K.Patel
2.Ashok R.Patel
3.Ratanshi M.Patel ..Petitioners in W.P.(MD)No.13549/19

1.Mr.Pankaj K.Patel
2.Ashok R.Patel
3.M.Khimji M.Patel ..Petitioners in W.P.(MD)No.13550/19

Vs.

1.The Union India,
Rep. by Secretary to Government,
Finance Department, New Delhi.

2.Reserve Bank of India,
No.16, Rajaji Salai, Chennai-600 001.

3.The Corporation Bank,
Rep. by its Chief Manager,
Tenkasi Branch,
No.87, Mattapa Street,
Tirunelveli Road, Tenkasi. ..1 to 3 respondents in all petitions

4.M/s.K.S.Patel and Sons,
Rep. by Partner Harshita and P.Patel,
No.59/1-C, Tanjore Main Road,
Trichy-620 013. .. 4th Respondent in W.P.(MD)No. 13548 / 2019

4.M/s.TIM India Exim,
Rep. by Partner Mahesh G.Patel,
No.675, 200 Feet Inner Ring Road,
Madhavaram, Chennai. ..4th Respondent in W.P.(MD)No. 13549 /2019

4.M/s.Global Trading Company,
Rep. by Partner Dinesh Shivagan Patel,
No.675, 200 Feet Inner Ring Road,
Madhavaram, Chennai. ..4th Respondent in W.P.(MD)No. 13550 / 2019

COMMON PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the third respondent pertaining to the impugned communication bearing Ref.CB1564/06/2019-20, Ref.CB1564/07/2019-20 and Ref.CB1564/08/2019-20, dated 23.04.2019, respectively and quash the same as arbitrary and illegal and consequently forbear the third respondent from initiating any consequential steps against the petitioners in pursuance of the impugned communication bearing Ref.CB1564/06/2019-20, Ref.CB1564/07/2019 and Ref.CB1564/08/2019, dated 23.04.2019, respectively or disseminate any information pertaining to declaration of the petitioners as a willful defaulter to any authority or agency or person.

For Petitioners: Mr.N.R.Charan
Senior Counsel for Mr.R.Devaraj
For R1 : No appearance
For R2 : No Appearance
For R3 : Mr.K.Jegadeesan
(in all petitions)

COMMON ORDER

[Order of the Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.N.R.Charan, learned Senior Counsel for Mr.R.Devaraj, learned counsel for the petitioners, Mr.K.Baalasundharam, learned counsel for the first respondent and Mr.K.Jegadeesan, learned counsel for the third respondent.

2. The petitioners have filed these writ petitions challenging the communications sent by the respondent Bank, dated 23.04.2019 being arbitrary and illegal and consequently to forbear the third respondent from taking any steps pursuant to the impugned communications, dated 23.04.2019.

3. The petitioners would contend that the impugned communications are against the regularization 3 of the Master Circular, dated 01.07.2015, which contemplates the procedure to be followed in identification of willful defaulters. It is further submitted that Clause 3(b) of the Master Circular, dated 01.07.2015, contemplates issuing a show cause notice only by the Committee headed by the Executive Director and not by the Chief

Manager and on that score, the impugned proceedings are liable to be quashed. Further, it is contended that the third respondent in fact ought to have awaited the outcome of the proceedings initiated by the Bank in O.A.No.1157, 1159 and 1162 of 2017, wherein status of the petitioners and the signatures are subjudiced and the Bank cannot be a judge of its own cause. Further it is contended that the impugned communications are against the principles of natural justice and Regulation 3(a) of the Master Regulation as the petitioners were not put on notice of the records / documents allegedly placed before the Committee for examination for identification of willful defaults and in the absence of notice / participation of the petitioners, all further proceedings are illegal. Thus, it is contended that the impugned communications are void for non-compliance of the Regulation 3(a) and (b) of the Master Circular. Further it is submitted that the third respondent by issuing the impugned notice, has pre-decided the issue before the receipt of the reply, dated 10.05.2019 sent by the petitioners.

4. The learned Senior Counsel appearing for the petitioners had elaborately referred to the Master Circular issued by the Reserve Bank of India on willful defaulters. It is submitted that the purpose of issuing such circular is to disseminate the credit information pertaining to willful defaulters for questioning Bank and financial institution so as to ensure that further Bank finance is not made available with them. It is submitted that in terms of Clause 3 of the circular, which deals mechanism for identification of willful defaulter, detail procedure has been contemplated. In this regard, emphasis was laid on the procedure contemplated in Clause 3(a) and (b) of the Circular, which reads as follows:-

> *"3. Mechanism for identification of Wilful Defaulters:*
>
> *The mechanism referred to in paragraph 2.5 above should generally include the following:-*
>
> *(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 offieers 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."*

5. It is submitted by the learned Senior Counsel that on a bare reading of the impugned communications, it is evidently clear that it is a total violation of the Master Circular issued by the Reserve Bank of India and the respondent Bank cannot issue such communications. Further, it is submitted that the larger issue is now pending before the Debt Recovery Tribunal in the proceedings initiated by the respondent bank under Section 19(1) of the Recovery of of Debts Due and Financial Institutions Act, 1993 (in short "Act"). Further it is submitted that if the proceedings are initiated by the respondent Bank to declare the petitioners as willful defaulter, which would mean prejudging the matter, which is pending before the Debt Recovery Tribunal.

6. Further the learned senior counsel has drawn the attention of this Court to the reply sent by the petitioners, dated 10.05.2019, wherein it has been pointed out that signatures of the petitioners were misused and the matter is now pending before the Debt Recovery Tribunal, which has referred the matter to CBI for further investigation. Further, it is submitted that forensic report of the signature by approved Forensic Expert in this regard as well as the Guarantee Documents and copies of the Promissory notes were enclosed along with the reply. Further, the respondent Bank has prejudged the issue and not taken any decision on the reply given by the petitioners. Therefore, on the above ground it is submitted that the impugned communications are liable to be quashed.

7. The learned standing counsel for the respondent Bank submitted that the impugned communications only inform the petitioners about the decision of the Committee and it is not incorrect to state that the impugned communication emanated from the respondent Bank. Further it is submitted that several crores of rupees have been defaulted not only by the petitioners but also the Group Companies, for which recovery proceedings have been initiated before the Debt Recovery Tribunal by invoking the power under Section 19(1) of the Act. Further it is submitted that the impugned communications are for different purpose and it has been done in accordance with the procedure stipulated in the Master Circular.

8. The learned counsel for the respondent Bank submitted that the submission that signatures have been forged is absolutely false and in all the documents of title mortgaged with the respondent Bank signatures have been affixed, thumb impressions have been impressed and photographs have also been affixed. Further more, the documents, which are the subject matter of these writ petitions, earlier mortgaged with Indian Oerseas Bank and after closing the loan account with the Indian Overseas Bank within short period, the same documents were mortgaged with the respondent Bank.

9. After elaborately hearing the learned counsel for the parties and perusal of the materials placed on record, we are inclined to partially agree with the statement made by the learned

Senior counsel for the petitioners. This is so because the impugned communications have emanated from the respondent Bank and there is no doubt as rightly submitted by the learned counsel for the respondent Bank, that the impugned communications refer to the decision of the Committee.

10. The said communications state that on examination of the account of the petitioners, the Committee has proposed to classify the petitioners, its' partners and guarantors as willful defaulters and the petitioners have been granted liberty to give fresh representation within a period of fifteen days. In our considered view, if according to the respondent Bank the impugned communications are show cause notices, then the principles of natural justice would require that the petitioners to be communicated the decision of the Committee as to on what basis, the Committee was of the *prima facie* view that the petitioners are to be classified as willful defaulters. If the respondent Banks attached the conclusion of the Committee along with impugned communications there would have been no error. But, what we find is that extract of what has been held by the Committee would not be sufficient to comply with the principles of natural justice, as the petitioners should have been given an effective opportunity to submit their reply to the provisional conclusion arrived at by the Committee.

11. Hence, for such reason alone, we are inclined to interfere with the impugned communications. We make it clear that any order passed in these writ petitions can have no impact on the proceedings pending before the Debt Recovery Tribunal.

12. In the light of the above, these writ petitions are allowed and the impugned communications are set aside with the direction to the respondent Bank to issue a fresh communication along with the decision of the Committee as to how the Committee arrived at the provisional conclusion that the petitioners and their partners and supporters are willful defaulters. On receipt of such communication, the petitioners shall be granted 15 days time to submit their reply to the Executive Director and the Chairman of the Committee for identification of willful default through the respondent Bank. Thereafter, the Committee shall take a decision in accordance with the provisions of the Master Circular. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar(CS)

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TO

1.The Secretary to Government,
Union India,
Finance Department, New Delhi.

2.Reserve Bank of India,
No.16, Rajaji Salai, Chennai-600 001.

3.The Chief Manager, Corporation Bank,
Tenkasi Branch,
No.87, Mattapa Street,
Tirunelveli Road, Tenkasi.

+1CC TO MR.R.DEVARAJ, Advocate Sr. No. 93791
+1CC TO MR.K.JAGADEESAN, Advocate Sr. No. 93848

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