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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 3529/2019

SHRI SANJEEV KUMAR ..... Petitioner

Through: Mr. Sujoy Kumar and Mr. Arindam Ghose, Advs.

versus

IDBI BANK LTD AND ANR. ..... Respondents

Through: Mr. Siddharth Barua and Ms. Aditya Gupta, Advs. for R1.

` Mr. H.S. Parihar and Mr. K.S. Parihar, Advs. for RBI.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

O R D E R

% **05.08.2019**

The present petition has been filed by the petitioner with the following prayers:

"In the facts and circumstances aforesaid the petitioners most respectfully pray that this Hon'ble Court may be pleased to:

a) pass a writ of certiorari or any other appropriate writ, order or direction quashing and / or setting aside the show cause notice dated 26.06.2018 as well as the impugned decisions dated December 12, 2018 and January 9, 2018 issued by the Respondent No.1

b) pass a writ of mandamus or any other appropriate writ, order or direction commanding and / or directing and / or restraining the respondents and in particular Respondent No.1 from publishing the photograph, name or any other details of the Petitioner in any newspapers, magazines or any other publication whatsoever in furtherance of the impugned decision dated 09.01.2019 and in case the same have already been published, the said Respondent No.1 be directed to issue *corrigendum in the magazines and newspapers in which the photographs and name etc. of the Petitioner was published and to remove from any website the name of the Petitioner from the category of willful defaulters.*

c) issue a declaration that the show cause notice dated 26.06.2018 and the impugned decisions dated 12.12.2018 and 09.01.2019 are illegal, wrongful, arbitrary, malafide, misdirected, unfounded, untenable, wholly without jurisdiction and null and void ab-initio.

d) award costs of the present proceedings in favour of the petitioners and against the respondents.

e) grant such other or further relief as this Hon'ble Court may deem fit, just and proper."

In substance the challenge of the petitioner is to the communications dated December 12, 2018 and January 9, 2019 communicating to the petitioner the decision of the respondent Bank declaring him as wilful defaulter and pursuant thereto, the bank has informed the petitioner, if in the eventuality the petitioner does not pay the amount as stated, the Bank shall put the petitioner's name and photograph in the newspaper and magazines.

The only submission made by Mr. Sujoy Kumar, learned counsel appearing for the petitioner is that the decision of the Bank to declare the petitioner a wilful defaulter is without giving him a copy of the order of the Identification Committee to enable the petitioner give a representation within 15 days to the Review Committee to enable the Review Committee consider the same and pass order in terms of the judgment of the Supreme Court in the case of ***State Bank of India v. Jah Developers Pvt. Ltd. and Ors. 2019 SCC Online 688*** more particularly Para 21, wherein the Supreme Court has held as under:

"21. Given the above conspectus of case law, we are of the view that there is no right to be represented by a lawyer in the in-house proceedings contained in paragraph 3 of the Revised Circular dated 01.07.2015, as it is clear that the events of wilful default as mentioned in paragraph 2.1.3 would only relate to the individual facts of each case. What has typically to be discovered is whether a unit has defaulted in making its payment obligations even when it has the capacity to honour the said obligations; or that it has borrowed funds which are diverted for other purposes, or siphoned off funds so that the funds have not been utilised for the specific purpose for which the finance was made available. Whether a default is intentional, deliberate, and calculated is again a question of fact which the lender may put to the borrower in a show cause notice to elicit the borrower's submissions on the same. However, we are of the view that Article 19(1)(g) is attracted in the facts of the present case as the moment a person is declared to be a wilful defaulter, the impact on its fundamental right to carry on business is direct and immediate. This is for the reason that no additional facilities can be granted by any bank/financial institutions, and entrepreneurs/promoters would be barred from institutional finance for five years. Banks/financial institutions can even change the management of the wilful defaulter, and a promoter/director of a wilful defaulter cannot be made promoter or director of any other borrower company. Equally, under Section 29A of the Insolvency and Bankruptcy Code, 2016, a wilful defaulter cannot even apply to be a resolution applicant. Given these drastic consequences, it is clear that the Revised Circular, being in public interest, must be construed reasonably. This being so, and given the fact that paragraph 3 of the Master Circular dated 01.07.2013 permitted the borrower to make a representation within 15 days of the preliminary decision of the First Committee, we are of the view that first and foremost, the Committee comprising of the Executive Director and two other senior officials, being the First Committee, after following paragraph 3(b) of the Revised Circular dated 01.07.2015, must give its order to the borrower as soon as it is made. The

> *borrower can then represent against such order within a period of 15 days to the Review Committee. Such written representation can be a full representation on facts and law (if any). The Review Committee must then pass a reasoned order on such representation which must then be served on the borrower. Given the fact that the earlier Master Circular dated 01.07.2013 itself considered such steps to be reasonable, we incorporate all these steps into the Revised Circular dated 01.07.2015. The impugned judgment is, therefore, set aside, and the appeals are allowed in terms of our judgment."*

Mr. Siddharth Barua, learned counsel appearing for the respondent Bank states, a copy of the Identification Committee has since been supplied to the petitioner along with the counter-affidavit. So it follows as a copy of the order of the Identification Committee having been given along with the counter-affidavit filed by the respondent Bank, in view of the judgment of the Supreme Court the petitioner shall have the liberty to file a representation to the order of the Identification Committee to the Review Committee within 15 days from today.

The Review Committee shall consider the representation so made by the petitioner and pass an order as expeditiously as possible.

Resultantly the communications dated December 12, 2018 and January 9, 2019 are set aside.

The petition stands disposed of.

CM No. 16197/2019

Dismissed as infructuous.

V. KAMESWAR RAO, J

AUGUST 05, 2019/*jg*