IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: May 23, 2019
Judgment delivered on: July 01, 2019

\+ W.P.(C) 7975/2016

M/S RADIKAL AGROTECH PVT LTD AND ORS

..... Petitioners

Through: Ms. Manpreet Kaur, Adv.

versus

IDBI BANK LTD

.... Respondent

Through: Mr.Sumit Nagpal, Adv.

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

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioners with the following prayers:-

> *"In view of the facts and circumstances of the present case and the submissions made herein above, the Petitioners, most respectfully prays that this Hon'ble Court may graciously be pleased to:*
>
> *a) Allow the present Petition;*
>
> *b) Pass a writ of mandamus or certiorari any other appropriate writs/ orders quashing/setting aside the impugned publication dated 04.08.2016 published by the Respondent Bank with photographs of the Petitioners in the 'Hindustan Times' and 'Navbharat Times';*
>
> *c) Pass a writ prohibiting Respondent Bank from publishing photographs of Petitioner Nos. 2 and 3 in*

any newspapers or magazines or any other publication as defaulters or in any other manner;

d) Direct the Respondent Bank to publish a notice in 'Hindustan Times' and 'Navbharat Times' withdrawing the impugned publication published on 04.08.2016.

e) Direct the Respondent Bank to pay a compensation of Rs 10 Lacs for loss of good will and reputation of the Petitioners;

f) Pass such other and further orders and/or directions as this Hon'ble Court may deem fit, just and proper."

2. The petitioner includes Radikal Agrotech Pvt. Ltd. the borrower Company and three others who are the guarantors.

3. The facts as noted from the record are, the Petitioner No.l Company approached the respondent Bank in the year 2014 for financial assistance. Vide letter dated March 25, 2014, the respondent in principle agreed to grant Working Capital Facilities of ₹10 Crore to the petitioner No.l Company, subject to the terms and conditions. Petitioner No. 1 Company in order to create security in favour of the respondent Bank hypothecated raw material, work in progress, finished goods lying in the factory, godown, elsewhere including in transit and all present and future book debts/receivables, stores, book debts and other current assets, both present and future on first pari passu charge.

4. That apart, the petitioner No.4 and petitioner Nos. 2 and 3 also executed corporate guarantees / personal guarantees. In terms of the credit facilities, the petitioners executed various documents on March 25, 2014 and pursuant thereto the limits were released to the petitioner No. 1 Company on March 27, 2014. The said limits were renewed at the request of the

petitioner No. 1 Company at the existing level of ₹10 crores on September 10, 2015. It is noted that the petitioner No. 1 Company was paying interest dues with some delay till April 01, 2015. The account of the petitioner No.1 Company remained overdrawn from May 01, 2015 till October 21, 2015 and thereafter, from October 28, 2015 it again became irregular and remained irregular till March 31, 2016. In accordance with the instructions of the Reserve Bank of India, the account of the petitioner No.1 Company was classified as a Non-Performing Asset.

5. In terms of the circular of the IDBI dated August 08, 2013, which envisaged the respondent Bank to publish the names and photographs of the defaulting borrowers/guarantors/obligors in the newspapers/magazines who in spite of reminders do not respond either by regularizing the defaults or do not come forward for settlement of dues. It is also noted that the Board of the respondent Bank also approved the proposal to publish names and photographs of defaulting borrower/guarantor/obligors in the newspaper vide circular dated October 21, 2014.

6. It is the case of the respondent Bank that the approval of the delegated authority for issuance of recall notice/legal notice, notice invoking guarantee was obtained in the month of March 2016. Pursuant to the approval, the respondent issued a Recall/Demand Notice on March 07, 2016 and thereby called upon the petitioner No.1 Company to pay an amount of ₹11,28,34,525/- within a period of 15 days, failing which the respondent shall be constrained to take such steps as may be

necessary for enforcing the securities and realizing its dues including but not limited to action/measures under the SARFAESI Act, 2002. It is the case of the respondent that as the petitioners neither approached the Bank for settlement of dues nor took any steps to regularize the defaulted amount, in terms of Circulars dated August 08, 2013 and October 21, 2014 of the respondent Bank, internal approval for publishing of names and photographs of petitioners in the newspaper was obtained from the delegated authority on March 11, 2016.

7. It is seen that on April 07, 2016, the Bank issued a notice to the petitioner Nos.2 and 3, the personal guarantors of the petitioner No.1 Company calling upon them to pay the entire outstanding sum of ₹11,28,34,525/- together with interest accrued thereon from March 02, 2016 within a period of 15 days, failing which the respondent shall proceed to publish their names and photographs in the newspaper. As the petitioners did not approach the Bank for settlement of dues, their names and photographs were published in the newspapers 'Hindustan Times' and 'Hindustan' on August 04, 2016.

8. It is the submission of the learned counsel for the petitioners that the impugned action is bad in law as the provisions of The Recovery of Debts Due To Banks and Financial Institution Banks, 1994, SARFAESI Act, RBI Master Circular on NPA Classification, RBI Master Circular on Wilful Defaulters and Notifications issued by Securities and Exchange Board of India, which primarily covers the law and procedure pertaining to recovery from defaulters and consequences of such

defaults, nowhere provides for publication of photographs of defaulting borrowers. It is her submission that the impugned publication is bad in law as even before the expiry of the statutory period of 60 days, as provided under the provisions of SARFAESI Act for clearing the liability and / or raising objections from the date of issuance of notice under Section 13(2) of the SARFAESI Act, the Bank has proceeded to publish the photographs of the petitioner Nos. 2 and 3 as defaulters. She submitted that both the petitioners are respectable citizens and are running and managing various businesses. Publication of photographs in such an arbitrary manner has tarnished their image and defamed them. The same has also adversely effected other business ventures of the petitioner Nos. 2 and 3. On this ground, the impugned publication needs to be set aside.

9. That apart, it was her submission that the publication was issued in a mechanical and cryptic manner without mentioning the requisite details, which are mandatory in law. She also contended that the publication has been issued without the approval of the authorized officer.

10. On the other hand, learned counsel for the respondent justified the action of the Bank by contending that the action has been taken in terms of the circulars of the Bank dated August 08, 2013 and October 21, 2014, which clearly contemplate publication of the photographs and names of the defaulters. He submitted that huge amount of ₹11,28,34,525/- was liable to be paid by the petitioners, which they have admittedly defaulted. He submitted that despite many opportunities, the petitioners had not

come forward to settle the dues, which compelled the Bank to publish the names and photographs of the petitioner Nos.2 and 3. He stated, there is no illegality in the action.

11. Having heard the learned counsel for the parties, at the outset, it must be stated that the petitioners have not challenged the vires of circulars dated August 08, 2013 and October 21, 2014. In the absence of any challenge to the vires of the circulars, the issue needs to be decided whether the action has been taken on the strength of the said circulars is justified. The said circulars clearly contemplate publishing names and photographs of the defaulting borrowers / guarantors / obligors and such a decision must not taken in a mechanical manner but very cautiously, that too at the level of an officer not below the rank of Chief General Manager. It is not the case of the petitioners that the action has been taken pursuant to a decision taken by an officer below the rank of Chief General Manager. Suffice it would be to state that the respondent Bank has taken a plea that the decision to publish the names and photographs of the petitioners was taken after taking approval from the delegated authority. That apart, there is a clear averment in para (xiii), that a notice was issued to the petitioners to pay the entire outstanding sum together with interest failing which the respondent shall proceed to publish their names and photographs in the newspaper. It is not the case of the petitioners that such a notice was not received by them. If that be so, even the obligation on the part of the Bank to issue notice before publishing the names and photographs has been complied with.

12. In substance, it is not the case of the petitioners that the procedure laid down in circulars dated August 08, 2013 and October 21, 2014 have not been followed. Keeping in view this aspect and the aspect that the vires of the circulars has not been challenged on any ground, I am afraid that the action of the respondent Bank cannot be faulted. In fact, the petitioners have averred in the rejoinder that they intend to challenge the vires of the circulars. Unfortunately, neither the writ petition has been amended nor a fresh writ petition has been filed challenging the vires of the said circulars. In view thereof, the issue, which falls for consideration, is required to be looked into and decided only in one manner, that is on the basis of the circulars dated August 08, 2013 and October 21, 2014. I state that the impugned action taken, is justified. Although, there are judgments of different High Courts, on the issue, but I note in the absence of any challenge to the vires of the circulars dated August 08, 2013 and October 21, 2014, the said judgments are distinguishable and have no applicability.

13. I accordingly, see no reason to interfere with the impugned action of the respondent Bank publishing the names and photographs in the newspaper. I accordingly, dismiss the petition. No costs.

V. KAMESWAR RAO, J

JULY 01, 2019/*jg*