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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 21.10.2019

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W.P.(C) 11281/2017

RAJ KUMAR KOHLI AND ANOTHER

..... Petitioner

Through: Mr. Ajay Kumar Tandon with Ms.
Purnima Singh, Advs.

versus

RESERVE BANK OF INDIA AND ANOTHER Respondent

Through: Mr. Ramesh Babu with Ms. Manisha
Singh and Ms. Sanya Panjwani, Advs.
for RBI.

Mr. R. Raghav Saket, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL):

1. The core grievance of the petitioners is that respondent No.2, which is a non-banking financial company, has imposed foreclosure charges qua its loan account without appreciating the fact that a proprietorship concern does not, in law, have an existence separate from its owner who is an individual.

1.1 More specifically, the petitioners contend that the imposition of foreclosure charges is in contravention to the provisions of the Reserve Bank of India's (RBI) Circular dated 14.7.2014 (hereafter referred to as 'Circular'). It is, important, therefore, to set forth the relevant extract of the Circular:

“...2. As a measure of customer protection and also in order to bring in uniformity with regard to prepayment of various loans by borrowers of banks and NBFCs, it is advised that NBFCs shall not charge foreclosure charges/ pre-payment penalties on all floating rate term loans sanctioned to individual borrower with immediate effect...”

2. The respondents resist the petition. RBI's stand as propounded by its counsel Mr. Ramesh Babu is that since the petitioners are carrying on business, via the proprietorship concern, the foreclosure charges will have to be imposed. The petitioners, on the other hand, contend that the proprietorship concern via which business is being run is an alter ego of petitioner no.1, i.e. an individual and hence is not a juridical entity separate from its owner. Given this position, petitioners submit that the Circular should apply to them.

3. Briefly, the background in which this writ petition has been filed is as follows:

4. The petitioners were sanctioned on 30.11.2009, a loan by respondent No.2 in the first instance of Rs.180 lakhs. This loan was secured by creating an equitable mortgage on an immovable property. The equitable mortgage was created on 30.11.2009. The property qua which equitable mortgage was created is described as House No.18, Road No.55, Punjabi Bagh, Delhi-110026 (in short 'property'). This property belongs to petitioner No.1. It is not in dispute that the loan of Rs.180 lakhs was disbursed by respondent No.2. Disbursal of amount took place on 15.12.2009.

5. On 30.9.2010, the aforementioned loan account sanctioned for Rs.180 lakhs was closed and a new loan account was opened by respondent no.2. It is the petitioners' case that though a separate account number was given, it

was really a case of top-up/enhancement of the loan from Rs.180 lakhs to Rs.270 lakhs.

6. According to the petitioners, this methodology of top-up/enhancement in the loan amount was repeated on two other occasions. The first time when such a step was taken, was on 5.1.2013 when respondent No.2 closed the loan account which was sanctioned for an amount of Rs.270 lakhs followed by opening of a new loan account. According to the petitioners with the top-up/enhancement the sanctioned limit went up to Rs.480 lakhs. This account was, however, also closed on 4.4.2014 followed by respondent No.2 opening a new account on the very same day with a sanctioned limit of Rs.600 lakhs.

7. It is the petitioners' say that in and about December 2014, they approached respondent No.2 to close their then subsisting loan account, which as indicated above, had a sanctioned limit of Rs.600 lakhs.

7.1 According to the petitioners, after requisite formalities for closure of the loan account were carried out, respondent No.2 released the title deeds concerning the mortgaged property.

8. It is the petitioners say that in and about April 2015, they became aware for the first time that every time the loan account was closed and a new loan account was opened, foreclosure charges were debited to their loan account. This propelled the petitioners to shoot off a notice on 16.04.2015 to respondent no. 2 via their lawyers. It is pertinent to note that a copy of the notice was sent to RBI as well.

8.1 The notice was duly replied by respondent No.2 vide a response dated 5.5.2015.

8.2 In sum, the stand taken by respondent No.2 was that since the loan

was taken for business purpose, the petitioners were not entitled to the benefit of the provision of the Circular issued by RBI.

8.3 Besides this, the assertion made was that since the closure of first three loan accounts had taken place before issuance of the Circular, it could not be applied to this case.

9. The petitioners issued a rejoinder dated 16.6.2015. The petitioners followed the rejoinder with two letters dated 10.6.2016 and 10.9.2016. These letters were sent through their counsel. The petitioners, in brief, in their correspondence with respondent No.2 took the stand, that they were entitled to the benefit of the provisions of the Circular issued by the RBI. Notably, as was done on earlier occasions, copies of these letters were also sent to the RBI.

10. Pertinently, on record is an email dated 28.4.2015, which, RBI had sent to its regional office located at Chennai. RBI appears to have sent this email to its local office, primarily with the view to have the grievance of the petitioners addressed. Notably, a copy of this email was also marked to the petitioners.

10.1 This communication of the RBI had its desired effect, *albeit*, partially. Resultantly, respondent No.2 decided to refund the foreclosure charges qua all but the last loan account. Consequently, Rs.12,43,836/- was refunded to the petitioners.

10.2 However, insofar as the last loan account was concerned, which, as indicated above, had a sanction limit of Rs.600 lakhs, respondent no. 2 refused to refund the foreclosure charges.

10.3 This aspect emerges upon perusal of email dated 12.01.2017 addressed by the Regional Office of the RBI to the counsel for the petitioners.

11. Thus, what is not in dispute is that insofar as the three loan accounts are concerned, foreclosure charges stand refunded to the petitioners, however, in respect of the last loan account, the stance adopted is that the Circular is inapplicable. In this behalf email dated 12.1.2017 adverts to the fact that since the petitioners had given a “self-proprietorship declaration” to the effect that the credit facilities amounting to Rs.600 lakhs were used exclusively for business purposes, the benefit of the Circular could not be extended *vis-a-vis* the last loan account.

12. Mr. Ramesh Babu, who appears for the RBI, has advanced his submissions in line with the contents of the email dated 12.1.2017.

13. Mr. R. Raghav Saket, who appears for respondent No.2, says that the foreclosure charges were refunded to the petitioners with respect to all but the last loan account on the advice rendered by the RBI and that insofar as the last loan account was concerned, foreclosure charges were not refunded since such an advice was not received from the RBI.

13.1 This apart, learned counsel says that since the credit facilities extended to the petitioners were utilized for business purposes by the proprietorship concern, the benefit of the provisions of the Circular could not be extended to the last loan account.

14. I have heard the counsel for the parties and perused the record.

15. According to me, the Circular would be applicable even to the last loan account which had a sanctioned limit of Rs.600 lakhs. The reason why I say so is that a proprietorship concern is not a juridical entity, which is separate from its proprietor. It is not in dispute that the petitioner No.1 is the proprietor of the proprietorship concern which goes by the name ‘India Sales Corporation’. Petitioner No.2 is the wife of petitioner No.1, who is

concededly, a co-borrower.

15.1 Furthermore, if I were to accept the stand of the respondents, then, one would have to insert the words in para 2 of the Circular which would have to hold out that loans sanctioned to individual borrowers for business purpose were not entitled for waiver of foreclosure charges. Admittedly, there is no such exception provided in the Circular. The scope and ambit of the Circular, bereft of intensive ambiguity, would have to be construed from its plain language. The language of the Circular is unambiguous. It states in no uncertain terms that NBFC's shall impose foreclosure charges/pre-payment penalties on all floating rate loans sanctioned to individual borrowers. As observed above, a proprietorship concern is nothing but an *alter ego* of the individual owner.

15.2 Therefore, the benefit of the provisions of the Circular would have to be extended by respondent No.2 to even the last loan account.

16. Accordingly, respondent No.2 is directed to refund the foreclosure charges/pre-payment penalty imposed *qua* the last loan account. Respondent No.2 will remit the amounts charged in that behalf within two weeks from the date of receipt of a copy of this order.

17. The captioned writ petition is disposed of in the aforementioned terms.

RAJIV SHAKDHER, J

OCTOBER 21, 2019/pmc