

OD-9

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE
(Via Video Conference)

WPO/267/2020
With
IA NO: GA/1/2020

PRIME TECHNOPLAST PRIVATE LIMITED
Versus
INDIAN BANK AND ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 8th December, 2020.

Appearance:
Mr. Abhrajit Mitra, Sr. Adv.
Mr. Satadeep Bhattacharya, Adv.
Mr. Yash Verdhan Deora, Adv.
Ms. Nikunj Barlia, Adv.
...for the petitioner

Mr. Om Narayan Rai, Adv.
...for the respondents

The Court : G.A. No. 1 of 2020 is allowed in view of the extreme urgency involved in the matter.

The petitioner has preferred the instant writ petition challenging a declaration dated January 16, 2018, to the effect that the petitioner is a wilful defaulter and an order by the Wilful Defaulter Review Committee dated February 28, 2018, affirming such declaration of wilful defaulter.

Learned senior counsel appearing for the petitioner argues that law governing the field was settled in SBI vs. Jah Developers (P) Limited, reported at (2019) 6 SCC 787. Placing reliance on paragraph 24 of the said judgment, learned senior counsel argues that the Wilful Defaulter Review Committee, after

following paragraph 3 (b) of the Revised Master Circular dated July 1, 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, it was held, 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.

In the instant case, it is submitted, the decision of the first committee was not communicated to the petitioner and the petitioner was given no opportunity to give a representation against the same. As such, the principles laid down in *Jah Developers (Supra)* were violated.

It is argued that, even on the basis of paragraph 3 (b) of the Master Circular of 2015, the Wilful Defaulter Committee acted *de hors* the law in failing to give proper opportunity to the petitioner and to consider its contentions prior to declaring the petitioner to be a wilful defaulter.

Learned senior counsel submits that, despite regular communication as to the reasons for the petitioner not being able to be present before the committee, proper opportunity was not given to the petitioner to make out its case before the committee.

That apart, although the Review Committee order was passed as long back as on February 28, 2018, the petitioner could not approach this forum previously due to an ongoing OTS (One Time Settlement) discussion going on between the parties. Learned senior counsel submits that, even otherwise, the writ petition is well within time, since only immediately prior to the filing of the writ petition,

penal action was sought to be taken by the respondents against the petitioner, giving rise to the cause of action for the instant writ petition.

Learned counsel for the respondents submits that the ratio laid down in *Jah Developers (supra)* partakes the character of a legislation by the judiciary in a sense, since the additional modalities laid down therein were introduced for the first time in the said judgment and were directed to be introduced into the Master Circular. As such, retrospective effect ought not to be given to the said modalities to obviate the resultant chaos that would arise from unsettling several previous settled declarations of wilful defaulter over a long period of time.

Learned counsel for the petitioner places reliance on the judgment of *M/s. Rup Diamonds and Ors. vs. Union of India and Ors.*, reported at (1989) 2 SCC 356, for the proposition that fence-sitters cannot re-agitate claims which they had not pursued for several years. If the petitioners in a case were not vigilant but were content to be dormant and choose to sit on the fence till somebody else's case came to be decided, their case could not be considered at all.

Learned counsel argues that the above action defines precisely the acts of the petitioner, inasmuch as the petitioner apparently waited for the judgment passed in *Jah Developers (supra)* and only then ventilated their alleged grievance in the present writ petition. Learned counsel for the respondents also cites the judgment of *State of Uttar Pradesh And Another vs. Bhailal Bhai* reported at AIR (1968) SC 1006, wherein it was held as a general rule that if there has been unreasonable delay, the Court ought not ordinarily to lend its aid to a party by the extraordinary remedy of mandamus.

Upon considering the submissions of the parties, it is evident that the petitioner chose to wait since February 28, 2018, when the Review Committee affirmed the order of the Wilful Defaulter Identification Committee, for as long as two years or more to come up with the present writ petition. The excuse of ongoing OTS is not sufficient to justify such delay, since discussions of One Time Settlement have no direct bearing on a declaration of wilful defaulter in any manner. Such a declaration is on the conduct of the borrower, on the basis of its past action and One Time Settlement is merely an offer by the borrower to foreclose the pending loans against it. As such, the nexus between the two, even if any, is not proximate enough to link both for the purpose of justifying the delay. Moreover, it is apparent from the documents annexed by the petitioner itself in the writ petition that the petitioner was well aware of the decisions of the Wilful Defaulter Identification Committee as well as the Review Committee since 2018 and deliberately chose not to move the writ petition. There is substance in the respondent's contention that Jah Developers (supra) might have been a trigger for the petitioner to come up with the present writ petition. Such action on the part of the petitioner comes squarely within the purview of M/s. Rup Diamond (supra) since the petitioner was nothing but a fence-sitter in the matter.

It is also seen that the petitioner was given several opportunities by the respondent authorities for placing its defence before the Wilful Defaulter Committee but the petitioner opted not to appear on each occasion. Hence, the first committee could not be faulted in any manner for issuing the declaration of Wilful Defaulter.

As far as such option of review is concerned, learned counsel for the respondents is justified in arguing that applicability of Jah Developers (supra) has to be considered with a modicum of prudence. Such introduction of modalities by interpretation in a judgment, having the force of a precedent, although sometimes operating retrospectively, ought not to be incorporated at the drop of the hat if the petitioner was at fault in unduly delaying a challenge against such an order. Undisputedly, in pending challenges against the previous declarations of wilful defaulter, the ratio of Jah Developers (supra) has a measure of role to play, but the same cannot hold true for matters which attained finality two years back, since such retrospective application in a blatant fashion would give rise to judicial anarchy and hit at the finality which is the hallmark of Rule of Law.

Moreover, in the present case, the petitioner failed to avail of several opportunities to appear before the Wilful Defaulter Committee. Thereafter, the Review Committee gave a reasoned order to affirm the declaration of wilful defaulter. The said reasoning was plausible in law and facts, thus leaving no scope to interfere with the same. Hence, the contentions raised by the writ petitioner fail.

Accordingly, W.P.O. No. 267 of 2020 is dismissed on contest without any order as to costs.

(SABYASACHI BHATTACHARYYA, J.)