OD-6

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/2352/2022

VISHAMBHAR SARAN AND ANR.
VS
CENTRAL BANK OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 23rd August, 2022.

Appearance:
Mr. Sabyasachi Choudhury, Adv.
Mr. Rajarshi Dutta, Adv.
Mr. Debjyoti Saha, Adv.
For the petitioners.

Ms. Usha Doshi, Adv.
Ms. Priyanka Gope, Adv.
For the respondents.

The Court:-The challenge in this writ petition is the letter dated June 30, 2022 communicating the decision of the Identification Committee declaring the petitioner no. 1 as a wilful defaulter. The Assistant General Manager, Stressed Asset Management Branch, Kolkata issued the same. The petitioner no.1 was the erstwhile Director of the Company in liquidation, namely M/s. Visa Power Limited. It is contended by Mr. Chowdhury that certain documents had been relied upon by the Central Bank of India in support of the identification of the petitioner no.1 and the company as the wilful defaulter under the Master Circular of the Reserve Bank of India. Despite there being a specific request in the representation dated November 4, 2022 by the petitioner no.1 to supply such documents, such documents were not provided by the Identification Committee. Instead, the petitioner no.1 was identified as the wilful defaulter. After such order was passed it was indicated in the order itself, that the documents must be supplied. Thus, the petitioner did not get an opportunity to deal with the documents, before the Identification Committee passed the order.

Mr. Chowdhury further submits that although there is a provision for review against the said order, no useful purpose would be served in filing a review against the order of the Identification Committee, when at the first instance, the petitioner No.1 was prevented from filing his reply upon consideration of those documents. Even if the Review Committee permitted the petitioner No.1 to make his submissions upon perusal of the documents, the petitioner no.1 would still be deprived of his right to controvert and/or explain the documents which were used by the authority against him, while passing the order. Mr. Chowdhury submits that there has been violation of the principles of natural justice.

Ms. Doshi, learned Advocate for the Bank, submits that the petitioner no.1 was afforded an opportunity of hearing, which was not availed of. The petitioner no.1 had taken the risk of not participating in the proceeding and allowed the order to be passed ex parte, thereby giving up all his claims to the documents. In any event, the petitioner no.1 has been permitted copies of the documents in the order itself. It is further submitted that the documents relied upon were within the knowledge and custody of the petitioner no.1 and the petitioner no.1 had intentionally raised this technical point, only to stall the proceeding, and its outcome. It is submitted that the petitioners have indulged in dilatory tactics.

Heard the learned advocates for the respective parties. It appears from the records that the proceeding was initiated as per the guidelines of Reserve Bank of India, namely, the Master Circular on Wilful Defaulters dated July 1, 2015.

Clause 3 provides the mechanism for identification of wilful defaulters. Clause 3(b) permits the committee to issue a show cause notice upon the concerned borrower/promoter/whole-time director. If the committee concludes that there has been wilful default after considering the submissions of the defaulter, it shall issue an order recording the fact of wilful default. An opportunity may be given to the borrower/promoter/whole time director for a personal hearing, if the Committee feels such an opportunity would be necessary. Clause 3(c) provides that the order of the committee should be reviewed by another committee headed by the Chairman/Chairman & Managing

Director and others, in the presence of two independent directors and non-executive directors of the bank and the order of the Identification Committee would become final, only after being confirmed by the Review Committee.

In this case, the petitioner No.1 received a notice dated December 31, 2020 issued by the Central Bank of India, to represent before the competent authority against the proposal for identification of the company and its director as a wilful defaulter. The said notice was challenged in WPO 2197 of 2022. By an order dated May 20, 2022, upon noting the contents of the notice, learned co-ordinate Bench observed that the notice clearly reflected that it had been issued by the review committee for identification of the petitioner No.1 as the wilful defaulter, which was the second committee. The challenge of the petitioner was that the review committee could not have issued a notice. First, the Identification Committee should have passed an order in terms of clause 3(b) of the Master Circular, and thereafter the review committee should have reviewed the order under Clause 3(c).

Upon hearing the parties and upon noting the decision operating in the field, His Lordship was pleased to remand the matter to the Identification Committee for consideration of the representation of the petitioner dated November 4, 2020. The said representation was the answer to the show cause notice. In the representation, a request was made to the committee to supply the documents which had been relied upon by the Bank while proposing to identify the petitioner no.1 as a wilful defaulter. His Lordship also observed that although the provisions of clause 3(c) did not provide that the Review Committee necessarily was required to provide an opportunity of hearing, it was quite possible that upon realizing that the first committee had not dealt with the reply to the show cause notice as per the Master Circular, as a cover up, an opportunity of hearing was permitted by the second committee. It was the specific finding of the Court that the Identification Committee had not dealt with the representation/answer to the show cause notice.

Under such circumstances, His Lordship remanded the matter to the Identification Committee for consideration of the representation dated November 4, 2020 being Annexure-P-11 to the said writ petition. The Identification Committee was directed to pass a reasoned order on each of the grounds urged in the letter dated November 4, 2020. His Lordship further directed that the Review Committee may, if necessary, take further steps in terms of clause 3[c] of the aforesaid guidelines.

In compliance of the order of His Lordship, the Identification Committee granted an opportunity of hearing to the petitioner and passed the order which has been impugned before this Court. The petitioner did not avail the opportunity of hearing.

The petitioners are aggrieved by the procedure followed by the Identification Committee. In the representation dated November 4, 2020, the petitioner No.1 asked for the documents. His Lordship had observed the same. Even if hearing had been provided to the petitioner no.1, yet such opportunity could not take away the right of the petitioner no.1 to deal with the documents which had been relied upon by the bank in support of their decision to declare the petitioner No.1 as a wilful defaulter. It is a settled principle of law, that all documents which are used against a party as evidence or as a foundation of certain allegations, must be supplied to the party before any adverse order is passed.

Once, the petitioner No.1 had already been identified as a wilful defaulter, the supply of documents would be an empty formality. The direction in the order impugned, for supply of the documents itself indicates that the authority thought that the petitioner no.1 was entitled to the documents. Had it been the specific contention of the bank that the petitioner was not entitled to the documents, in that case, such direction to supply the documents before the second stage of the proceeding, would not have been passed. The second stage is merely a review of the order. The scope of review is limited. Those documents should have been provided at the first instance. It is not a situation that the documents had been subsequently discovered, that is, after the order under review had been passed. They had formed a part of the proceedings before the identification committee. At the first stage of the proceeding which dealt with the actual adjudication and identification of the wilful defaulter, the principles of natural justice were not followed. The procedure was defective and the order impugned is subject to judicial review.

Under such circumstances, the order dated 30th June, 2022 declaring the petitioner No.1 as the wilful defaulter is set aside and quashed. The bank shall provide the documents sought for in the representation dated November 4, 2020 within a period of three weeks from the date of communication of this order. The petitioner No.1 will file a supplementary representation/reply to the show cause notice in addition to the representation dated November 4, 2020 within two weeks. The Identification Committee shall decide the issues in terms of clause 3(b) of the mechanism for identification of wilful defaulter. Once such exercise by the Identification Committee is completed, the provisions under clause 3(c), shall be set in motion. The petitioner no.1 shall make himself available for a personal hearing before the Identification Committee on the date and time fixed by the Identification Committee and will cooperate.

This Court has not gone into the merits of the order impugned. The time period fixed hereinabove is mandatory.

Since no affidavit has been called for, the allegations against the bank are deemed to be denied.

Writ petition is disposed of.

Parties are to act on the server copy of this order.

(SHAMPA SARKAR, J)

snn.