



Crl.O.P.Nos.2415 & 13953 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	01.12.2022
Pronounced on	12.12.2022

CORAM :

THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.O.P.Nos.2415 & 13953 of 2014

and

M.P.Nos.1 & 2 of 2014

and

M.P.Nos.1 & 2 of 2014

B.V.Ramesh ... Petitioner in Crl.O.P.No.2415 of 2014

R.K.Ravishankar ... Petitioner in Crl.O.P.No.13953 of 2014

Vs

The Reserve Bank of India,
Represented by its Authorised Officer,
R.Parthasarathy, Asst.Manager,
Department of Non-Banking Supervision,
Chennai.

... Respondent in both petitions

COMMON PRAYER : Criminal Original Petitions filed under Section 482 of the Criminal Procedure Code seeking the quashing of E.O.C.C.No.136 of 2010 filed against the petitioners.



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For Petitioner in Crl.O.P.
No.2415 of 2014

: Mr.Sathish Parasaran,
Senior Counsel
for Mr.M.Kempraj.

For Petitioner in Crl.O.P.
No.13593 of 2014

: Mr.G.Ravikumar.

For Respondent in both Petitions : Mr.T.Poornam.

COMMON ORDER

The petitioners in the above criminal original petitions have been arrayed as third and sixth accused respectively in the original E.O.C.C.No.14 of 2001. After the case was split up against certain accused, the case was assigned number viz., E.O.C.C.No.136 of 2010, wherein they had been arrayed as first and second accused respectively. The complaint was filed by the respondent herein for the offences under Sections 45QA, 58B (4AAA) & 58C of the Reserve Bank of India Act, 1934 against M/s.Kreast Finlease Ltd., and its Directors.

2.The allegations in the complaint are that M/s.Kreast Finlease Ltd., and its Directors failed to comply with the orders passed by the Company Law Board dated 28.04.1998, 22.06.1998, 23.07.1998,



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05.10.1998 and 01.12.1998 directing the first accused / Company to repay the depositors in accordance with the terms and conditions set out in the said orders which were passed on the applications filed by several depositors. Three accused had participated and represented the Company in the proceedings before the Company Law Board and had undertaken to repay the depositors. The respondent had sent a notice dated 15.06.1999 to the first, second, sixth, seventh and eighth accused (ranking prior to splitting up of the case) to ascertain as to whether the first accused had complied with the directions given by the Company Law Board and calling upon them to report compliance of the directions of the Company Law Board. The Company and the Directors wilfully failed to report compliance and the said act of the first accused and its Directors constituted an offence under Section 58B (4 AAA) of the Reserve Bank of India Act, 1934, and that the other accused were directors incharge and responsible to the first accused for the conduct of its business and hence liable for the said offence.

3(a). Mr.Sathish Parasaran, learned Senior Counsel for the petitioner in Crl.O.P.No.2415 of 2014 submitted that the complaint suffers from non-application of mind in as much as the petitioner was



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never a director of the Company. He was working as Company Secretary for the period between 05.11.1997 to 30.11.1998. As a Company Secretary, his role in the Company was purely administrative and ministerial in nature. The Company Secretaries cannot be equated with Directors who are in the management of the company. In any case, there are no specific allegations as against the petitioner as to the role played by him. The final order dated 01.12.1998, which is said to have been violated by the Company and its Directors, was passed after he relinquished his office as Company Secretary on 30.11.1998. Hence, it cannot be said that he violated the order.

3(b). The learned Senior Counsel further submitted that Form 32 would show that his name is found in the heading 'C' which reads as follows. 'Appointment of and changes in Managership and Secretaryship', whereas heading 'A' reads as follows 'Appointment of and changes among Directors'. Hence, it is clear that the petitioner worked in the Company only as Company Secretary and not as Director.

3(c). The respondent cannot dispute Form 32 and in fact in the complaint the period of his office is correctly mentioned as 05.11.1997 to



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30.11.1998. Having obtained this information from the records, the respondent cannot pleaded ignorance of his position as Company Secretary. Therefore, for all the above reasons, the learned Senior Counsel submitted that the complaint against the petitioner is an abuse of process of law. He would further submit that because of the pendency of the complaint, the petitioner had to suffer certain disqualifications and hence, prayed for quashing the complaint.

4.Mr.G.Ravikumar, learned counsel for the petitioner in Crl.O.P.No.13593 of 2014 submitted that the entire complaint is misconceived and premature. The Company Law Board by order dated 01.12.1998 had given 33 months time to make payments and comply with the order. However, the respondent, even before the expiry of 33 months had filed the complaint and therefore, the complaint is without cause of action. The learned counsel further submitted that the Company was liquidated in the year 2001 even before the expiry of time given for payment. In view of the winding up of the Company, the Company cannot be expected to make payment in terms of the order passed by the Company Law Board and hence, there is no violation and prayed for quashing of the complaint.



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WEB COPY 5(a). Mr.T.Poornam, learned counsel for the respondent submitted that the complaint, *prima facie*, discloses the offences alleged against the accused herein. The complaint has been preferred by the respondent against the first accused, which is a non-banking finance Company and has been accepting deposits from the public. The allegations in the complaint are that the Company Law Board vide its orders dated 28.04.1998, 22.06.1998, 23.07.1998, 05.10.1998 and 01.12.1998 on the applications filed by several depositors, directed the first accused / Company to repay the depositors within the time stipulated in the said orders. The order dated 01.12.1998 of the Company Law Board directed the Company as well its directors to comply with the directions made by the Company Law Board.

5(b). The Company and its Directors had violated the orders passed by the Company Law Board and did not ensure the compliance of the order within the stipulated period. The Company and its directors are liable to be prosecuted under Section 58 B (4 AAA) of the Reserve Bank of India Act, 1934 which reads as follows;

“Whoever fails to comply with any order made by the Company Law Board under sub-section (2) of section



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45QA, shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to a fine of not less than rupees fifty for every day during which such non-compliance continues. “

The directors named along with the first accused Company are liable to be prosecuted in terms of Section 58 C of the Reserve Bank of India Act, 1934 which provides for vicarious liability of the directors and other officers if the violation is committed by the Company.

5(c). The petitioner in Crl.O.P.No.2415 of 2014 was admittedly the Company Secretary of the first accused Company from 05.11.1997 till 30.11.1998 and he was in the Company when the orders dated 28.04.1998, 22.06.1998, 23.07.1998 and 05.10.1998 were passed by the Company law board. Hence, he is an officer within the meaning of Section 2 (30) of the Companies Act, 1956 and therefore, liable to comply with the orders of the Company Law Board as an officer of the first accused Company.

5(d).The question as to whether the petitioner is incharge of the conduct of the business of the first accused Company cannot be decided in this petition and has to be decided only after the trial, since the respondent / complainant is disputing the averment of the petitioner that



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he was not incharge and responsible for the conduct of the business of the Company. This Court by a series of orders passed in Crl.R.C.No.533 of 2011 dated 20.02.2017, Crl.O.P.No.3652 of 2009 dated 26.02.2015, Crl.O.P.No.22951 of 2017 dated 04.01.2022 had passed orders, dismissing the petitions filed by the other directors for quashing of the criminal complaint.

5(e). Further, the Hon'ble Apex Court in “**Integrated Finance Company Ltd. Vs. Reserve Bank of India**” reported in “**2015 13 SCC 772**” has held that, Chapter IIIB of the Reserve Bank of India Act, 1934 has overriding effect over all other laws including the Companies Act and therefore, the violation under the Reserve Bank of India Act, 1934 cannot be compared with violation under other Acts and therefore, the principles of law relating to vicarious liability in respect of other Acts, cannot be adopted for violations under the Reserve Bank of India Act, 1934.

6 (a) The learned counsel for the respondent submitted that the petitioner in Crl.O.P.No.13953 of 2014 participated in the proceedings



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and there is a specific mention in the order passed by the Company Law Board in Paragraph No.13 of its order dated 01.12.1998, which reads as follows;

“13.Shri R.K.Ravi Shankar, Shri Prasad C.R.Reddy and Shri Anumolu Kanniah, forming part of the new management of the Company shall file an affidavit of undertaking with this Bench to keep up the repayment schedule with a copy to the General Manager, Reserve Bank of India, Department of Non-Banking Supervision, Chennai within 15 days from the date of receipt of this Order.”

6(b). The complaint is not premature. The complaint alleges violation of several orders including the order dated 01.12.1998. Therefore, the submission of the learned counsel for the petitioner cannot be countenanced. Even in the order dated 01.12.1998, the Company Law Board directed compliance of the order in a phased manner. Therefore, it is a question of fact as to which order was violated and which portion of the order dated 01.12.1998 is violated, which has to be gone into in a trial. Similarly, the winding up the company took place much after the complaint was filed and hence, cannot be the basis for quashing the complaint.



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WEB COPY 7 .Heard the Learned Counsels on either side and perused the materials on record.

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8. Admittedly, several other directors had filed petition before this Court either to quash or as a revision as against discharge petition. Most of the petitions have been dismissed by this court on the ground that this court cannot go into the issue as to whether the petitioners were really incharge and responsible to that conduct of the business of the first accused Company. This Court in all these cases, had found that the Company Law Board by its order dated 01.12.1998 had directed not only the Company, but also all the Directors and officers of the Company to comply with the directions of the Board. Therefore, in such circumstances, this Court felt that it is for the directors to face the trial and establish that they are not responsible for the conduct of the business of the first accused Company. This Court in Crl.O.P.No.22951 of 2017 dated 04.01.2022 observed as follows:-

“5. As indicated above, the private complaint itself filed for



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violation of the orders of the Company Law Board passed on 01.12.1998. The order has been passed pursuant to the default committed by the Company in repaying the amount to various depositors totalling more than Rs.20 crores at the relevant point of time. Therefore, the Company Law Board has passed an order directing the Company and its Directors to repay to the depositors by stipulating time limits and mode of payments to various depositors. Paragraphs 14 and 15 of the order of the Company Law Board make it clear that in the event of failure to pay the deposit back to the depositors, the Company and its Directors are liable to be prosecuted for violation as per law i.e., under the Reserve Bank of India Act, 1934. Though it is emphasized that the present petitioner was inducted as a Director only on 29.01.2000 much after the order passed by the Company Law Board, it is to be noted that once the person is inducted as a Director, he not only takes the responsibility of the company, but also has the responsibility to honour the orders already staring at the company. When there is a direction to the company to refund all the deposits received by the company, the responsibility is equally on all the Directors to see that the orders of the Company Law Board is properly complied. Therefore, one cannot take advantage of mere resignation from the Directorship at the relevant point of time to contend that he was not responsible to the affairs of the Company. Therefore, at this stage, this Court is of the view that the contention of the learned counsel cannot be countenanced. Whether or not the petitioner was incharge and responsible to the conduct of the business of the company or whether or not he has purposely resigned to avoid the directions of the Company Law Board is a matter of evidence. Therefore, at this stage, this Court is not inclined to quash the proceedings. It is also relevant to note that similar stand has been taken by some of the co-accused wherein they pleaded discharge, which was dismissed by the trial Court and the revision filed against the said order in Crl.R.C.No.533 of 2011 has also been dismissed by this Court vide order dated 20.02.2017 holding that there are



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prima facie materials to proceed against the petitioners who are arrayed as Accused 2, 4 and 5 in the private complaint.”

Similarly in Crl.R.C.No.533 of 2011 dated 20.02.2017 has held as follows;

“15.The CLB further directed some of the Directors of the new management to file an undertaking affidavit for repayment of deposits and also to make the company and every Directors including the officers of the company have jointly and severally responsible for the due compliance of the order. Since all the above orders were not complied with, the respondent/Reserve Bank of India filed a complaint for non compliance of the order passed by CLB under Section 45QA and 58-B(4AAA) of RBI Act.

*....
20. The next contention of the learned counsel appearing for the petitioners is that the petitioners were not in-charge and responsible to the affairs of the concerned company and no criminal liability could be fixed on them. But this question cannot be considered at this stage. The complaint has been filed by the respondent only for non compliance of the order passed by CLB, which is an offence under Section 58-B(4AAA) of the RBI Act. Since there is a specific direction issued by the CLB that the first accused company and its Directors irrespective of the fact that whether they are in-charge and responsible for the affairs of the company have to comply with the order, since the company and its Directors failed to comply with the order, the present complaint has been filed. Apart from that even in the complaint, necessary averments also made by the complainant that all the petitioners are in-charge and responsible to the affairs of the company and application of the provisions of Section 58C of RBI Act also cannot be considered at this stage. In the above circumstances, the judgment relied on by the learned*



counsel appearing for the petitioners not relevance at this stage. In the above circumstances, this Court find no illegality or irregularity in the order passed by the Court below and there is no reason to interfere with the order of the Court below.”

Further, in Crl.O.P.No3652 of 2009 dated 26.02.2015, this Court has held as follows;

“6. It is seen from the various orders passed by the Company Law Board referred to above that those orders were passed under Section 45QA of the RBI Act. It is submitted by the learned Senior Counsel for the petitioner that though Company Law Board has passed orders under Section 45QA of the RBI Act, directing the Company and its Directors to comply with the orders, admittedly the Directors were not made parties to those orders and therefore, the Director cannot be held liable for non-compliance of the order. According to me, even though the Director were not parties to the proceedings initiated by the Company Law Board under Section 45QA of the RBI Act and orders were passed on various dates as referred to above, by virtue of the said orders, the Company as well as the Directors were directed to comply with the orders of the Company Law Board. If the petitioner is aggrieved by such orders, he ought to have challenged that orders. In other words, without challenging the orders passed by the Company Law Board, the petitioner cannot contend in this petition that he cannot be held responsible for non-compliance of the orders passed by the Company Law Board.

13. As stated supra, in this case it has been stated in the complaint that the petitioner is one of the Directors and he along with other Directors were in-charge of and responsible for the conduct of first accused Company at the time of default and the same was also mentioned in para 10



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of the complaint. Admittedly, the petitioner was the Director of the first accused Company till August 1998 between 06.02.1998 and 24.08.1998 seven directions were issued by the Company Law Board and being the Director, the petitioner did not take any action to comply with the orders of the Company Law Board and therefore, the petitioner is liable to be prosecuted as per the provisions of Sections 58B (4 AAA) and 58C of the RBI Act.”

9. Based on the orders passed by this Court in the above quash petitions and revisions, the learned counsel for the respondent / complainant would submit that the present quash petition which also seeks to quash the complaint since the petitioner was not incharge and responsible for the conduct of the business of the Company cannot be allowed. This Court is unable to accept the said submission of the learned counsel for the respondent. The order passed by the Company Law Board dated 01.12.1998 reads as follows;

“14. The Company and every officer including the Directors of the Company shall be jointly and severally responsible for due compliance of this order.”

The above order would show that the Company and every officer including the directors of the Company, are jointly responsible for the



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compliance of the order passed by the Company Law Board. Based on the said order, the learned counsel for the respondent would submit that unlike prosecutions under the other enactments, where vicarious liability is fixed on directors, in this case, the directors are jointly and severally responsible for the due compliance of the order. However, we find that the complaint does not proceed on the basis that the Company and the individual directors named in the complaint were liable for compliance of the order. On the other hand, it is the specific case of the respondent / complainant that the first accused Company did not comply with the order and therefore, the other directors who are in-charge and responsible for the conduct of the business of the Company in terms of Section 58 C of the Reserve Bank of India Act, 1934 were liable to be prosecuted. The other directors were sought to be impleaded in the complaint only on the basis of Section 58C of the Reserve Bank of India Act, 1934. They were not prosecuted in their individual capacity. If the arguments of the learned counsel for the respondent were to be accepted, the complaint should have not only said that the Company violated the orders but also the other directors who were part of the Board at the time, when the orders were passed, were liable in their individual capacity. That is not the nature of the complaint in this case. The complaint specifically says



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that orders were violated by the Company and therefore, the other directors are to be prosecuted by virtue of Section 58 (c) of the Reserve Bank of India Act, 1934. The orders passed by this Court in the earlier petitions filed by certain other Directors were on the facts of that case. The facts and circumstances as against each of the accused has to be considered in order to appreciate the points raised by them.

10. In the instant case, we find that the case of the petitioner stands on a different footing. The petitioner was shown as accused since he is said to have been a director between 05.11.1997 and 01.12.1998. The complaint alleges that the Company violated the orders passed by the Company Law Board under 45Q A of the Reserve Bank of India Act, 1934 dated 28.04.1998, 22.06.1998, 23.07.1998, 05.10.1998 and 01.12.1998. Admittedly, the petitioner had worked as Company secretary during the period from 05.11.1997 to 30.11.1998 when the orders dated 28.04.1998, 22.06.1998, 23.07.1998, 05.10.1998 were passed, except the order dated 01.12.1998. As stated earlier, it is not the case of the complainant that the directors who were part of the Board at the relevant time i.e., on 01.12.1998 are liable in view of the specific direction of the Company Law Board. It is their case that the Company had violated the



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directions and the directors are vicariously liable under Section 58(C) of the Companies Act, 1956. Further, we find that it is only in the order dated 01.12.1998, there is a specific direction that the Company and the other directors have to comply with the order. In the earlier orders, the direction is to the Company to comply with the orders passed by the Company Law Board.

11. The submission of the learned counsel for the respondent that the petitioner admittedly is a Company Secretary and hence, he would be liable vicariously under Section 58(C) second part of the Reserve Bank of India Act, 1934 cannot be accepted, since it is contrary to the allegation in the complaint. In a criminal prosecution, the allegations have to be clear and specific and as to the role played by each of the accused. The Hon'ble Apex Court has repeatedly held that a cognizance order has to be made on an application of mind and a person cannot be prosecuted unless there is a *prima facie* evidence to show that an offence has been committed by him.

12. In the instant case, it is the specific case of the complainant that the petitioner was the director and it is shown by the petitioner that he was not a director. Form 32 produced shows that his case falls under



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heading 'C' which means change of position of managership and secretaryship and this is the record based on which he sought to be prosecuted. The very fact that the complaint has mentioned the period during which he was employed in the company correctly, would show that they have verified the records. A verification of records would reveal that the petitioner was only working as Company Secretary. The respondent cannot pick and choose a part of the record and cannot ignore other part of the record for the purpose of prosecution. Having chosen to prosecute the petitioner, stating that he was only a director, this Court is of the view that the respondent cannot take a stand that even as a Company Secretary, he is liable under the second part of Section 58(C) of the Reserve Bank of India Act. The second part deals with prosecution of officers without whose consent, connivance and attributable neglect etc., offence would not have been committed. In this case, there are no allegations as against the petitioner to suggest that his case would fall under the second part of Section 58(C) of the Reserve Bank of India Act. Further, the submission that since the fact is disputed by the respondent, the said issue has to be adjudicated in a trial, cannot be accepted.



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13.The petitioner has been able to show a document of sterling quality which cannot be disputed. The Hon'ble Apex Court in **Rajiv Thapar and others vs. Madan Lal Kapoor** reported in (2013)3 SCC 330 held that in order to quash the proceedings at the stage of 482, the material produced by the accused can be looked into provided the material is of sterling and impeccable quality and that it is either not refuted or justifiably cannot be refuted by the prosecution. In our view, Form 32 produced by the petitioner cannot be justifiably refuted by the respondent and it can be the basis for quashing of the complaint. The relevant portion of the said judgment is extracted hereunder for better understanding:-

“23. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under [Section 482](#) of the Cr.P.C.:-

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject



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and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under [Section 482](#) of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.“

14.The learned counsel for the respondent relied upon the Judgemnt of the Hon'ble Apex Court in “**Integrated Finance Company Ltd. Vs. Reserve Bank of India**” reported in “**2015 13 SCC 772**” to show that the Reserve Bank of India Act has overriding effect over all the laws including the Companies Act, 1956. We are conscious of the



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importance of the directions given by the Company Law Board under the Reserve Bank of India Act. However, the role of the offender has to be clearly split out. That burden on the prosecution cannot be diluted merely because the offence is serious. It is the specific case of the petitioner that he is working as Company Secretary who only does administrative and ministerial jobs and has to obey the persons in management. For all the above reasons, the complaint in EOCC No.136 of 2010 as against the petitioner in Crl.O.P.No.2415 of 2014, B.V.Ramesh is liable to be quashed. Accordingly, Crl.O.P.No.2415 of 2014 is allowed.

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15.As regards, Crl.O.P.No.13593 of 2014, the learned counsel submitted that as per the complaint, the final order dated 01.12.1998 has been violated and not the other orders passed by the Company Law Board. However, we find that the complaint not only says that the order 01.12.1998 has been violated, but also the other earlier orders of the Company law board have been violated. This has to be adjudicated in a trial. It is for the respondent to establish as to which of the orders have been violated in the trial before the learned Magistrate and as to how the



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petitioner is liable for the same. The Trial Court has to thereafter consider as to which of the orders have been violated and whether the offence has been made out and therefore, this Court cannot go into that factual dispute.

16. The learned counsel further submitted that in the order dated 01.12.1998, the Company Law Board granted 33 months to comply with the order and therefore, since the complaint was filed much before the period had lapsed, the complaint is premature. Further, he submitted that the Company went into liquidation before the expiry of 33 months time given by the Company Law Board to the comply with the order. As stated earlier, it is the case of the respondent that the earlier orders were violated and even in the order dated 01.12.1998, the Company Law Board had directed the Company to make payment in phases. It was only in one part of the order which directed the Company to make payment within 33 months. Major portion of the order would show that in certain categories of deposits, the Company Law Board had directed the payments were to be made within between 3 months to 33 months. Therefore, the submissions that the respondent ought to have waited for 33 months is an issue which has to be decided in a trial.



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17.Hence, this Court is of the view that the case of the petitioner in Crl.O.P.No.13593 of 2014 stands on a different footing. There is a specific observation made in the order dated 01.12.1998 regarding his participation in the proceedings and he is aware of the proceedings and there is also a direction as against him, to file an affidavit of undertaking to keep up the repayment schedule with the copy to the General Manager, Reserve Bank of India within 15 days from the date of receipt of the order. In view of the specific role alleged against this petitioner, we are of the view that it is for him to agitate his case before the trial Court. Therefore, for the above reasons, Crl.O.P.No.13593 of 2014 is liable to be dismissed.

18.In fine,

(i) Crl.O.P.No.2415 of 2014 filed by B.V.Ramesh is allowed.

(ii) Crl.O.P.No.13593 of 2014 filed by R.K.Ravishankar is dismissed.

(iii) All connected miscellaneous petitions are closed.

12.12.2022

ay/skn



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Index: Yes/No

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To

The Authorised Officer,
Reserve Bank of India,
R.Parthasarathy, Asst.Manager,
Department of Non-Banking Supervision,
Chennai.

SUNDER MOHAN, J.

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