

OD – 32-34

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/98/2023
IA No.GA/1/2023

MANOJ TOSHNIWAL

-Versus-

IDBI BANK LIMITED AND ORS.

APOT/99/2023
IA No.GA/1/2023

RAMESH CHANDRA BARDIA

-Versus-

IDBI BANK LIMITED AND ORS.

APOT/100/2023
IA No.GA/1/2023

SUNITA BARDIA

-Versus-

IDBI BANK LIMITED AND ORS.

BEFORE :

THE HON'BLE ACTING CHIEF JUSTICE T.S. SIVAGNANAM

And

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 26th April, 2023

Appearance :

Mr. Mainak Bose, Adv.

Mr. Rishab Karnani, Adv.

Mr. Naman Choudhury, Adv.

...for the appellant

Ms. Soni Ojha, Adv.

Ms. Sonia Nandy, Adv.

..for the respondent.

The Court : We have heard Mr. Mainak Bose, learned
counsel assisted by Mr. Rishab Karnani and Mr. Naman Choudhury,

learned advocates for the appellant and Ms. Soni Ojha assisted by Ms. Sonia Nandy, learned Advocates for the respondent.

These intra court appeals being APOT/98/2023, APOT/99/2023 and APOT/1001/2023 have been filed by the writ petitioner against the orders dated 23rd March, 2023 passed in WPO/181/2023, WPO/182/2023 and WPO/183/2023 respectively. In the said writ petitions, the appellant had challenged the notice dated 9th January, 2023 by which the appellant was called upon to show cause as to why the appellant should not be declared as a wilful defaulter in terms of the Master Circular issued by the Reserve Bank of India. The principal ground on which the appellant had challenged the show cause notice is by contending that there was an earlier show cause notice issued which culminated in an order declaring the appellant as wilful defaulters and as against the said declaration, the appellant had filed a review petition before the Review Committee and proceedings were pending before the Review Committee and parallelly the respondent/Bank issued a fresh show cause notice. This show cause notice was put to challenge by the appellant in WPO/2387/2022 which was allowed by order dated 1st September, 2022 and the said order dated 18th July, 2022 was set aside. Now, the respondent/Bank has issued a fresh show cause notice which was impugned in the writ petition.

The learned advocate appearing for the appellant submitted that when proceedings are pending before the Review

Committee, a second show cause notice could not have been issued. Further, this submission did not find favour with the learned writ Court and the writ petition had been dismissed.

It is the submission of the learned counsel for the respondent bank that all the earlier proceedings have been cancelled and what has been issued is not a second show-cause notice but a fresh show-cause notice. If, according to the respondent bank, all proceedings had been withdrawn and the clock has been set to the original position, then it goes without saying that the order by which the appellant were declared as wilful defaulters dated 28th July, 2021 has to be necessarily set aside. In fact, the correctness of the said order has been questioned by the appellant before the Wilful Defaulters Review Committee as early as on 16th August, 2021 and till date the Review committee had not passed any orders. However, the submission of the learned counsel for the respondent bank is that nothing survives in the review application since all proceedings stand withdrawn. This is of course is not clear on perusal of the fresh show-cause notice issued by the respondent bank which was impugned in the writ petition. Therefore, the petitioner should be sufficiently safeguarded in this respect so that there is no ambiguity when the matter goes back to the respondent bank to decide the matter afresh.

For the above reasons, the appeals stand disposed of by setting aside the order passed by the Wilful Defaulters Review Committee dated 28th July, 2021 and consequently, disposing of the petition before the Wilful Defaulters Review Committee as unnecessary and leaving it open to the appellant to raise all points questioning the correctness of the show-cause notice dated 9th January, 2023.

The appellants are granted three weeks time from the date of receipt of the server copy of this order to respond to the show-cause notice along with documents which they propose to rely upon. On receipt of their reply, the concerned Committee shall afford an opportunity of personal hearing to the authorised representative of the appellants and take a decision on merits and in accordance with law.

The appeals (APOT/98/2023, APOT/99/2023 and APOT/100/2023) stand allowed to the extent indicated.

The connected applications for stay also stand closed.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)