OD – 3

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/1540/2023

M/S CHOLAMANDALAM INVESTMENT AND FINANCE COMPANY LIMITED
VS
U C O BANK CUSTOMER SERVICE CELL OPERATION AND SERVICE DEPARTMENT AND ORS

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date : 05TH SEPTEMBER, 2023.

Appearance:
Mrs. Reshmi Ghosh, Adv.
Mr. Itteqar Munshi, Adv.
Mr. Ranjit Singh, Adv.
Ms. Pooja Sett, Adv.
For the petitioner

The Court : Despite service, none appears for the respondents. Affidavit of service and the envelope filed in Court today be kept on record.

The respondent No.3 was a borrower from the petitioner/finance company. The respondent No.3 having failed to repay the loan, proceedings were initiated. Ultimately, an application under Section 9 of the Arbitration & Conciliation Act, 1996 came up for consideration before a co-ordinate Bench of this Court, being No. AP/54/2023. Vide order dated February 28, 2023, the learned Single Judge directed the respondent to show cause as to why he should not be directed to immediately furnish security to the tune of Rs.10,84,525/- before the Court.

Since none appeared for the respondent/borrower on the next date when the matter was called on for hearing, vide order dated March 28, 2023 it was directed that two bank accounts of the respondent were to be attached by the banks concerned immediately, and the banks were to file a report before the Court on the next returnable date. One of such accounts was lying with the UCO bank and other with the AXIS Bank. In so far as banks are concerned, it is contended by the petitioner that the Axis bank complied with the direction of the Court.

However, the UCO Bank initially did not respond to the communication made to it. Subsequently, an e-mail was sent by the UCO Bank indicating that the order of the Court had been complied with and the said bank had freezed the account in question bearing A/c. No.04380100006993 belonging to the respondent No.3.

Ultimately, the matter culminated in a settlement between the petitioner and the borrower/respondent No.3. The respondent No.3 filed an undertaking, whereby the said respondent expressed the intention to settle the loan agreement at a total settlement amount of Rs.10 lakhs in one transaction, requesting the petitioner company to adjust the frozen amount (from respective banks) towards outstanding amount, upon payment of residual amount as per undertaking.

Taking note of the said undertaking, vide order dated June 27, 2023 passed in AP/54/2023, a co-ordinate Bench observed that the respondent had undertaken to settle the loan agreement for a total settlement amount of Rs.10 lakhs in one transaction. Considering the same and the submission of counsel, the Court went on to record that AP/54/2023 was allowed and disposed of by directing the concerned banks, namely, the UCO Bank and the AXIS bank, to de-freeze the respondent's accounts mentioned in the order dated March 28, 2023.

The petitioner argues that though the AXIS Bank complied, the UCO Bank has not complied with the said direction to the letter and spirit since, although the accounts were defrozen, the dues of the petitioner were never disbursed in favour of the petitioner.

Learned counsel for the petitioner places reliance on annexures to the writ petition to indicate that there was a request made by the borrower/respondent No.3 in favour of the UCO Bank, asking for disbursal of the amount and de-freezing the account in terms of the order of the co-ordinate Bench. In fact, the respondent No.4, the wife of the borrower/respondent No.3, had also signed, with her spouse, on a NEFT/RTGS funds remittance application form filed before the UCO Bank for such purpose.

However, thereafter, the amount is not being disbursed by the UCO Bank in favour of the petitioner on the pretext that the account stands jointly in the name of the borrower/ respondent No.3 and his wife, the respondent No.4, the latter not being a party to the entire transaction.

Since the respondent chose not to appear despite service, the matter is taken up for disposal ex parte.

A bare perusal of the undertaking given by the borrower/ respondent No.3 shows that the clear understanding among the parties was that the parties had agreed to a settlement amount of Rs.10 lakhs in one transaction. The petitioner was to adjust the frozen amount from the respective banks towards outstanding amount upon payment of residual amount as per undertaking. The expression "residual" clearly shows that the settlement amount was to be disbursed in favour of the petitioner first and thereafter the residual amount was to be disbursed to the borrower.

Since the respondent No.4, the wife of the borrower, was also a party to the understanding to the extent that she had signed the remittance form for defreezing and reopening the amount with the UCO bank, it cannot be said that the respondent No.4 was not in the know of the entire transaction and the settlement.

Moreover, there is nothing on record to indicate that there is a strained relationship between the respondent No.3 and the respondent No. 4, who are spouses of each other. Thus, it can very well be construed that the respondent No.4 had full knowledge of the entire settlement and had taken advantage of the same by being instrumental in de-freezing the account with the UCO Bank, at least by signing on the remittance form and joining with her husband, the borrower in resumption of operation of the account pursuant to the order of the court which recorded the settlement. Since the undertaking given by the borrower has acquired the complexion of an order of the Court, it is the bounden duty of the UCO Bank to honour the same.

Accordingly, WPO/1540/2023 is allowed, thereby directing the respondent nos. 1 and 2 to ensure that the amount of Rs.8 lakhs, the remaining amount of the mutually settled sum, be disbursed in favour of the petitioner from the account of the respondent Nos. 3 and 4 held jointly with the UCO Bank, being A/c No. 04380100006993, as expeditiously as possible, positively within a fortnight from the date of the communication of this order to the said respondent.

The parties shall act on a server copy of this order without insisting upon prior production of a certified copy of this order for the purpose of compliance.

No order as to costs.

(SABYASACHI BHATTACHARYYA, J.)

A.Dey