

OD – 4

RVWO/49/2023
IA No.GA/1/2023

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

BIPLAB SHANKAR BOSE

-Versus-

STATE BANK OF INDIA AND ORS.

BEFORE :
THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA
Date : 11th December, 2023

Appearance :
Mr. Mainak Bose, Adv.
Mr. Rishabh Karnani, Adv.
Mr. Pranab Sharma, Adv.
for the petitioner.

Mr. Joy Saha, Sr. Adv.
Mr. Anirban Pramanick, Adv.
...for the respondent.

The Court : Affidavit of service filed in Court today
be kept on record.

Learned senior counsel for the petitioner submits that
the present writ petitioner had preferred a writ petition along
with several others. The bunch of writ petitions were taken up
for hearing together and disposed of by a common judgment and
order. Appeals were preferred by all the writ petitioners from
the said order. In the appeal preferred by the present writ
petitioner, as in some others, it was pointed out that there

were certain distinguishing features as pleaded in the writ petition which were not considered by this Court while deciding the writ petitions. On such premise, vide order dated September 27, 2023, the appellate Court while disposing of APOT/45/2023 granted leave to this petitioner to file a review application which this Court was requested by the Division Bench to consider on merits and in accordance with law. It was observed that in the event the respondent bank decides to file an additional affidavit-in-opposition to the grounds raised in the writ petition, leave may be granted to the respondent bank to do so.

Learned senior counsel for the petitioner seeks to distinguish the petitioner's case from the other writ petitions on two grounds. First, it is argued that the writ petitioner was a professional director of the borrower company. The expression 'professional director' does not find place in the concerned Master Circular of RBI relating willful defaulters. As such, it is argued that the provision of the Master Circular did not apply to the petitioner.

Secondly, the present applicant was never served with any show cause notice prior to declaration as willful defaulter.

It is argued that the review application ought to be entertained and allowed on such ground.

Learned senior counsel appearing for the respondent-Bank argues that there is no mention of the expression 'professional director' as a classification of directors within the four corners of the Companies Act, 2013. It is argued that in several paragraphs of the present review application including paragraphs 1 and 3, the review applicant had admitted that he was a whole time professional director thereby admitting clearly that he was a whole time director, professional or otherwise. Since whole time directors are squarely covered under the Master Circular, it is argued that the first line of distinction cannot be tenable.

In so far as the ground regarding non-service of show cause notice is concerned, it is contended that such factual aspect cannot be revisited in review.

Heard learned counsel for the parties. It transpires from the admission in the review application as well as the documents annexed to the review application that the petitioner was designated as a whole time director of the borrower company. The expression 'professional' merely appears a categorization which is alien to the Companies Act as such.

Be that as it may, since the petitioner is admittedly a whole time director, no distinction can be drawn on such ground with the other directors for the purpose of entertaining a review application.

In so far as the other argument of the petitioner is concerned, it is seen from the writ petition that the petitioner merely pleaded that he had come to learn that a purported show cause notice dated February 8, 2019 was issued by the respondent no.2 by which the petitioner was informed that the loan account of the said company was classified as Non Performing Asset with effect from September 5, 2018.

The said sentence, first of all, does not categorically plead that no show cause notice was served on the petitioner. On the contrary, in the second sentence of paragraph 7 of the writ petition, the petitioner categorically admitted that by the said purported show cause notice, "the petitioner was informed" that the loan account of the company was classified as Non Performing Asset. Be that as it may, since the issue of non-service of show cause notice on the petitioner individually was never pleaded in the writ petition at all, the same cannot be a ground for review, as there could not be any error apparent on the face of the record for non-consideration of a non-existent pleading.

Accordingly, I do not find any error apparent on the face of the record in the order sought to be reviewed or discovery of new matter to entertain the review application at all.

In so far as the general leave granted by the Division Bench is concerned, the Division Bench merely granted liberty to the petitioner to file a review application in the light of the observations made therein without adverting to any of the grounds of review now pleaded before this Court.

Such leave to file a review application, by no stretch of imagination tantamounts to a remand or a direction on this Court to compulsorily entertain the review application.

In view of the above observations, I do not find any ground of review as contemplated in Order 47 of the Code of Civil Procedure to admit the present review application.

Accordingly, RVWO/49/2023 along with IA No.GA/1/2023 filed in connection therewith are dismissed without any order as to costs.

(SABYASACHI BHATTACHARYYA, J.)