IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2023

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Writ Petition No.29967 of 2012

M/S.Pallava Textile Limited
Rep. By Its Director,
No.27C, Sankar Bypass Road,
Pallipalayam, Erode-638 006. ...Petitioner

-Vs-

1. The Reserve Bank Of India,
   New Delhi.

2. ING VYSYA BANK LIMITED,
   Jothi Theatre Road,
   Vallipalayam,
   Tiruppur-641 001.

3. Credit Information Bureau (India) Limited,
   Hoechst House, 6th Floor,
   193, Backbay Reclamation,
   Nariman Point, Mumbai-21. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the second respondent to recall the communication classifying the petitioner as wilful defaulter in exercise of power under Master Circular dated 01.07.2009 of the first respondent.

For Petitioner	:	Mr.V.Anil Kumar for Mr.R.S.Raghunathan
For Respondents	:	
(for R1)	:	Mr.C.Mohan for M/s.Kingh & Patridge
(for R2)	:	Ms.jAiyashwaraya Nathan for Mr.J.K.Bhaskar
(for R3)	:	Mr.KrishnaMoorthy

ORDER

The relief sought in the present writ petition is to direct the second respondent to recall the communication classifying the petitioner as wilful defaulter in exercise of power under Master Circular dated 01.07.2009.

2.The grievance of the petitioner is that subsequently, the petitioner had settled loan dues and therefore, the declaration made by the second respondent that the petitioner is a wilful defaulter is to be removed.

3.The very relief sought for in the present writ petition is not entertainable in view of the fact that no such communication is placed before this Court for consideration. In the absence of any such order declaring the petitioner as wilful defaulter, the prayer as such sought for to direct the second respondent, is not entertainable.

4.The learned counsel appearing for the first respondent drew the attention of this Court with reference to the law settled by the Apex Court of India in the cases of wilful default. In the case of ***State Bank of India Vs. JAH Developers Private Limited, reported in 2019 (6SCC) 787,*** paragraph 24 reads as follows:

> *"24. Given the above conspectus of case law, we are of the view that there is no right to be represented by a lawyer in the in-house proceedings contained in Para 3 of the Revised Circular dated 1-7-2015, as it is clear that the events of wilful default as mentioned in Para 2.1.3 would only relate to the individual facts of each case. What has typically to be discovered is whether a unit has defaulted in making its payment obligations even when it has the capacity to honour the said obligations; or that it has borrowed funds which are diverted for other purposes, or siphoned off funds so that the funds have not been utilised for the specific purpose for which the finance was made available. Whether a default is intentional, deliberate, and calculated is again a question of fact which the lender may*

put to the borrower in a show-cause notice to elicit the borrower's submissions on the same. However, we are of the view that Article 19(1)(g) is attracted in the facts of the present case as the moment a person is declared to be a wilful defaulter, the impact on its fundamental right to carry on business is direct and immediate. This is for the reason that no additional facilities can be granted by any bank/financial institutions, and entrepreneurs/ promoters would be barred from institutional finance for five years. Banks/ financial institutions can even change the management of the wilful defaulter, and a promoter/director of a wilful defaulter cannot be made promoter or director of any other borrower company. Equally, under Section 29-A of the Insolvency and Bankruptcy Code, 2016, a wilful defaulter cannot even apply to be a resolution applicant. Given these drastic consequences, it is clear that the Revised Circular, being in public interest, must be construed reasonably. This being so, and given the fact that Para 3 of the Master Circular dated 1-7-2013 permitted the borrower to make a representation within 15 days of the preliminary decision of the First Committee, we are of the view that first and foremost, the Committee comprising of the Executive Director and two other senior officials, being the First Committee, after following Para 3(b) of the Revised Circular dated 1-7-2015, must give its order to the *borrower as soon as it is made. The borrower can then represent against such order within a period of 15 days to the Review Committee. Such written representation can be a full representation on facts and law (if any). The Review Committee must then pass a reasoned order on such representation which must then be served on the borrower. Given the fact that the earlier Master Circular dated 1-7-2013 itself considered such steps to be reasonable, we incorporate all these steps into the Revised Circular dated 1-7-2015. The impugned judgment is, therefore, set aside, and the appeals are allowed in terms of our judgment. We thank the learned Amicus Curiae, Shri Parag Tripathi, for his valuable assistance to this Court."*

5.In any event, the petitioner has not challenged any communication or order issued by the second respondent declaring the petitioner as wilful defaulter. Thus, the relief as such sought is not entertainable and if at all, any grievance exist to the writ petitioner, he is at liberty to approach the competent authority in the manner known to law.

6.Further the learned counsel for the petitioner made a submission that second respondent/ING Vysya Bank Limited, has now merged with Kotak Mahindra Bank and thus, he is at liberty to approach the Kotak Mahindra Bank for redressal of its grievances if any.

7.Accordingly, the writ petition stands **disposed of**. No costs.

08.03.2023

Index:Yes
Speaking order
Neutral Citation:Yes
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S.M.SUBRAMANIAM, J.

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