# IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

**239-2** **CWP-28373-2022**
**Date of Decision: 14.12.2023**

**YES BANK LIMITED**

... Petitioner

VERSUS

**PERMANENT LOK ADALAT (PUBLIC UTILITY SERVICES) LUDHIANA AND ANOTHER**

... Respondents

**CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.**

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Present: Mr. Shailender Kashyap, Advocate
for the petitioner.

Mr. Deepak Sharma, Advocate
for respondent No.2.

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**VINOD S. BHARDWAJ, J. (ORAL)**

Challenge in the present petition is to the Award dated 04.08.2022 (Annexure P-3) passed by the Permanent Lok Adalat (Public Utility Services), Ludhiana in application No.409 dated 28.09.2018 titled as 'Bhalinder Singh Uppal Vs. Yes Bank Ltd.'

Learned counsel for the petitioner contends that the respondent-applicant, being a sole proprietor of the firm namely Vijay Departmental Store, had received a loan of Rs.86,00,000/- from the petitioner-Bank. The respondent-applicant prepaid the loan before expiry of the tenure whereupon the petitioner-Bank had charged a sum of Rs.2,35,994/- as prepayment/ foreclosure charges. As per the claim made by the respondent-applicant, such charges could not have been collected from him as the same had been imposed in violation of the guidelines in Circular No.399/3.10.42/2014 issued by the Reserve Bank of India according to which no such fore-closure charges could be claimed on any term loan advanced on a floating rate to an individual borrower. Since, identity of a proprietorship is no different than the individual, hence, the charges could not be levied.

The petitioner-Bank had submitted its reply before the Permanent Lok Adalat (Public Utility Services), Ludhiana averring that the loan facility extended in the present case did not fall under the exception Reserve Bank of India guidelines and that a loan advanced to an individual, for the purposes of business was not covered for the said benefit as per the circular issued by the Reserve Bank of India bearing No.DBR.DIR. BC.No.08/13.03.00/2019-20 dated 02.08.2019. It is alleged that notwithstanding the abovesaid circular issued by the Reserve Bank of India which is binding upon the banking institutions, the Permanent Lok Adalat (Public Utility Services), Ludhiana passed the impugned Award against the petitioner-Bank. Hence, the present writ petition. In his arguments, the above aspects were re-iterated.

Counsel for the respondent-applicant has, on the other hand, argued that the arguments advanced by the counsel for the petitioner are devoid of any merits. As per the circular issued by the Reserve Bank of India and in force as on the date when the petitioner sought foreclosure of the loan account in 2018, there was no such exception carved out. The circular of 2019 issued by the Reserve Bank of India and relied upon by the petitioner is dated 02.08.2019. The said circular thus takes away a benefit, in favour of a proprietor/individual, by its interpretation, as a first time measure. The said circular can only be read prospectively and cannot take away an accrued right retrospectively. The foreclosure having been done before the above circular, the same cannot be cited against him. Even otherwise, the language of the said circular also suggests that the same is operative prospectively. Reference is made to the following extract of the abovesaid circular:

> *"XXXX XXXX XXXX*
>
> *2. In this connection, it is clarified that banks shall not charge foreclosure charges/prepayment penalties on any floating rate term loan sanctioned, for purposes other than business, to individual borrowers with or without co-obligant(s)."*

***(Emphasis Supplied)***

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

The first issue that arises for consideration before this Court is as to whether the borrower is liable to pay foreclosure charges when the loan was advanced to a sole proprietor. This Court has already dealt with the said issue in the matter of ***"Association of Property Professionals Versus State of Haryana and others"*** bearing No.***CWP-19796-2018*** decided on ***12.12.2022*** wherein it has been held that the juristic entity of a sole proprietor is not different than that of an individual and that the law does not separate their entity. Hence, a sole proprietorship is inherently covered under the individual itself and any benefit that enures in favour of a sole proprietorship would be validly available to the individual as well since their juristic status and entity remains as one. Relevant extract thereof reads as under:-

> "*It is thus a well settled position in law that a proprietory (sic) concern and the proprietor are one and the same and that*

> *they cannot be treated as separate juristic entities. The proprietary concern derives its identity and individuality from the proprietor and subsumes itself in the proprietor. Segregation of the two is incomprehensible in law when it comes to determining their rights and liabilities and legal fiction regards them as one. They would thus fall under the definition of an individual. Consequently, the petitioners as sole proprietors cannot be treated as an entity "other than individual" when the registration as a Real Estate Agent is in the name of the proprietory (sic) concerned. The demand raised through Public Notice (Annexure P-8) is thus bad and unsustainable and the petitioners would be liable to pay the registration charges/renewal charges as are applicable to the individuals instead of the category "other than individual".*

Insofar as the issue of the clarificatory circular dated 02.08.2019 is concerned, it is evident from a perusal of the paragraph extracted above that the same uses the expression "shall" and does not by any intent or object relate back to the date prior thereto and its language suggest that the said circular is to be made operational prospectively. There is no further clarification/direction issued by the Reserve Bank of India as per which the abovesaid circular would also be applicable with respect to the loan account that had been closed prior to the issuance of the abovesaid circular. The said issue has also been considered by this Court in the judgment of ***"M/s Ramsons International Versus State of Punjab and others"*** bearing No.***CWP-29513-2018*** decided on ***20.11.2023***, wherein it was held that such clarificatory circulars which tend to take away a class of individuals from the benefit that had otherwise accrued in their favour as on the date when such an application was moved, would nonetheless operate prospectively and cannot be made enforceable retrospectively. A relevant extract of the said judgment reads as under:-

> "*Insofar as the contention of the respondent that the unit was not working as on the date when the inspection of the same was conducted in 2013 and the unit being closed since 01.04.2011 is concerned, the said objection is declined being not maintainable since no such eligibility condition had been prescribed for the release of capital subsidy. Perusal of the Industrial Policy of 1996, notified by the State of Punjab, specifically enumerates that the condition for the unit was to be functional for a period of five years and the requisite documents required to be submitted were the APRs as per Rule 2.22 read with Clause 13 of the Policy. The same were duly furnished and supporting Form-H was also submitted. The communication generated by the respondents itself showed that they were in receipt of the said documents and verification of the said documents including Form-H is and/or was pending at their own end. Even though the above reason does not find a place in the order of rejection, however, the said reason is also falsified from the admitted and undisputed documents. They cannot seek to capitalize their own delay and to not release the due capital subsidy in favour of the industrialist i.e. the petitioner. Further, it was not mandated in the Industrial Policy of 1996 that an industrial unit has to be functional also as on the date when the claim for release of capital subsidy is being considered or that the capital subsidy is being released. By interpreting the scheme document in such a manner, the respondents are introducing certain conditions as were not contained in the Industrial Policy of 1996 itself. The respondents would be estopped from introducing any other condition for release of capital subsidy especially when an industrialist has made investment on an assurance given by the respondent State itself. Having altered the*

> *position on such an assurance extended by the Govt., the withdrawal of such benefit by the respondents in a unilateral and arbitrary manner by prescribing conditions not originally incorporated in the policy document would be unsustainable in law.*"

Since the specific case of the respondent-applicant was to the effect that the foreclosure had already been availed by him in 2018 i.e. more than a year prior to the issuance of said circular, hence, the same cannot be cited as a basis for justifying the claim and levying the foreclosure charges. Moreover, it is also pointed out by the learned counsel appearing on behalf of the petitioner-Bank that, in the meanwhile, they have satisfied the Award too.

In the given circumstances and taking into consideration the position of law extracted above as well as the import of the circular dated 02.08.2019 and its prospective application, I find that there is no illegality, perversity or impropriety in the impugned Award passed by the Permanent Lok Adalat (Public Utility Services), Ludhiana.

The present petition is accordingly dismissed and the Award dated 04.08.2022 (Annexure P-3) passed by Permanent Lok Adalat (Public Utility Services), Ludhiana in Application No.409 dated 28.09.2018 titled as "Bhalinder Singh Uppal Versus Yes Bank India Limited" is affirmed.

**(VINOD S. BHARDWAJ)**
**JUDGE**

**DECEMBER 14, 2023**
***rajender***

*Whether speaking/reasoned : Yes/No*
*Whether reportable : Yes/No*