IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3064 OF 2022
WITH
IN-PERSON APPLICATION (L) NO. 2609 OF 2022
WITH
IN-PERSON APPLICATION (L) NO. 18868 OF 2022

Kiran P. Khair … Petitioner

Versus

The Chief General Manager, Consumer Education and Protection Dept. and Anr. …Respondents

Mr. Kiran P. Khair, petitioner appears in person.
Mr. Prasad Shenoy a/w. Ms. Aditi Pathak and Mr. Vijay Salokhe i/b. BLAC & Co. for respondent no. 1-RBI.
Ms. Aabha Dogra a/w. Mr. Karan Dogra i/b. Rignaya & Associates LLP for respondent no. 2.

CORAM: G. S. KULKARNI & FIRDOSH P. POONIWALLA, JJ.
DATED: 8 February, 2024

P.C.

1. We have heard the petitioner-in-person, Mr. Shenoy, learned counsel for respondent no. 1-RBI and Ms. Dogra, learned counsel for respondent no. 2, which is a non-banking finance company.

2. This petition is filed by the petitioner praying for the following reliefs:

> "a) Issue a Writ of Certiorari and/or any other Writ, Order or Direction in the nature of Certiorari, calling for the records and proceedings and after going into the legality and the propriety thereof Order and Direct Respondent no. 2 to stop auctioning of the petitioner's gold ornaments scheduled on 03/02/22 and 04/02/22.
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> b) Order and direct Respondent no.2 to accept the principal amount of rupees 6,00,000 and interest at the rate 12% from 27/02/20 to 31/08/20.

c) Pending hearing and disposal of the Writ Petition Order and Direct the Respondent no 2 to hand over the gold ornaments pledged with it to the Petitioner on fulfilment of prayer b above.

d) Order and Direct Respondent no. 2 to abide by the judgement of the Supreme Court of India by quashing and setting aside the additional interest and compound interest levied on the gold loan of the petitioner during the moratorium period.

e) grant ad-interim relief in terms of prayer a, b and c above.

f) Order and Direct Respondent no.2 to pay damages of Rs. 5 lacs for illegitimately withholding the gold ornaments, depriving the petitioner to make them available to his family and causing the petitioner and his family harassment, anxiety and mental torture.

g) Order and Direct Respondent no. 1 to censure the concerned Ombudsman for his erroneous order dated 20/04/21.

h) Order and direct Respondent no.1 to ensure that the benefits of moratorium in all respects are granted and received by all the gold loan borrowers of Respondent no.2.

i) Order and Direct Respondent no.1 to instruct Respondent no. 2 to give appropriate compensation to borrowers, whose gold has been auctioned by Respondent no.2 by not extending the benefits of moratorium.

j) Order and Direct Respondent no.1 to ensure that appropriate damages are given by Respondent No.2, to the borrowers whose gold has been auctioned by not providing benefits of moratorium.

k) Order and Direct Respondent no.1 to stipulate that the rate of interest levied on Gold loans by Respondent no.2 does not exceed a margin of 4% on the cost of funds.

l) Order and Direct Respondent no.1 to initiate appropriate action against the auditors M's Varma & Varma of Respondent no.2, for misleading note relating to moratorium attached to the quarterly financial statements of Respondent no.2."

3. It is not in dispute that the petitioner, under the facility as made available by respondent no. 2, had availed of what is popularly known as "Gold Loan". The total amount disbursed in favour of the petitioner was

Rs.6,00,000/- on terms and conditions as contained in the sanction letter dated 28 January, 2020. The sanction letter itself is a contract between respondent no. 2 and the petitioner, which clearly sets out the period of loan, the principal amount, due date to be 22 January, 2021, payment mode, rate of interest upto 360 days at 25% p.a., mode of computation of interest and rebate for early payment of interest available in the chart which is set out in the sanction letter, which is as follows:

Rebate for early payment of interest is available as given in the chart below		
If paid within	**Rebate**	**Effective Rate Of interest**
30 Days	13% p.a.	12% p.a.
60 Days	7% p.a.	18% p.a.
90 Days	5% p.a.	20% p.a.
180 Days	4% p.a.	21% p.a.
270 Days	2% p.a.	23% p.a.
360 Days	0% p.a.	25% p.a.
Above 360 days	0% p.a.	27% p.a. (including Penal Interest @ 2% p.a. after 360 days)

Also, in Clause 6, there is an Arbitration Agreement which provides that the disputes between the parties to be referred to arbitration under the Arbitration and Conciliation Act, 1996.

4. It appears from the facts of the case that although the petitioner had obtained the loan in question, which was in January, 2020, immediately thereafter there was a period, which was hit by Covid-19 pandemic, being the period with effect from March, 2020. It is in such context, the Reserve Bank of

India (RBI) had issued a circular to all commercial banks including to non-banking financial companies *inter alia* providing for rescheduling of payments – Term loans and Working Capital Facilities. The said circular reads thus:

> "RBI/2019-20/186
>
> DOR No.BP.BC 47/21.04.048/2019-20   March 27, 2020
>
> All Commercial Banks (including Small Finance Banks, Local Area Banks and Regional Rural Banks)
> All Primary (Urban) Co-operative Banks/State Co-operative Banks/District Central Co-operative Banks
> All All-India Financial Institutions
> All Non-Banking Financial Companies (including Housing Finance Companies)
>
> Madam/Dear Sir,
>
> COVID-19 – Regulatory Package
>
> Please refer to the Statement of Development and Regulatory Policies released on March 27, 2020 where inter alia certain regulatory measures were announced to mitigate the burden of debt servicing brought about by disruptions on account of COVID-19 pandemic and to ensure the continuity of viable businesses. In this regard, the detailed instructions are as follows:
>
> (i) **Rescheduling of Payments - Term Loans and Working Capital Facilities**
>
> 2. In respect of all term loans (including agricultural term loans, retail and crop loans), all commercial banks (including regional rural banks, small finance banks and local area banks), co-operative banks, all-India Financial Institutions, and NBFCs (including housing finance companies) ("lending institutions") are permitted to grant a moratorium of three months on payment of all instalments falling due between March 1, 2020 and May 31, 2020. The repayment schedule for such loans as also the residual tenor, will be shifted across the board by three months after the moratorium period Interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period.
>
> 3. In respect of working capital facilities sanctioned in the form of cash credit/overdraft ("CC/OD"), lending institutions are permitted to defer the recovery of interest applied in respect of all such facilities during the period from March 1, 2020 upto May 31, 2020 ("deferment"). The accumulated accrued interest shall be recovered immediately after the completion of this period.

(ii) **Easing of Working Capital Financing**

4. In respect of working capital facilities sanctioned in the form of CC/OD to borrowers facing stress on account of the economic fallout of the pandemic, lending institutions may recalculate the 'drawing power' by reducing the margins and/or by reassessing the working capital cycle. This relief shall be available in respect of all such changes effected up to May 31, 2020 and shall be contingent on the lending institutions satisfying themselves that the same is necessitated on account of the economic fallout from COVID-19. Further, accounts provided relief under these instructions shall be subject to subsequent supervisory review with regard to their justifiability on account of the economic fallout from COVID-19.

Classification as Special Mention Account (SMA) and Non-Performing Asset (NPA)

5. Since the moratorium/deferment/recalculation of the 'drawing power' is being provided specifically to enable the borrowers to tide over economic fallout from COVID-19, the same will not be treated as concession or change in terms and conditions of loan agreements due to financial difficulty of the borrower under paragraph 2 of the Annex to the Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions, 2019 dated June 7, 2019 ("Prudential Framework"). Consequently, such a measure, by itself, shall not result in asset classification downgrade.

6. The asset classification of term loans which are granted relief as per paragraph 2 shall be determined on the basis of revised due dates and the revised repayment schedule. Similarly, working capital facilities where relief is provided as per paragraph 3 above, the SMA and the out of order status shall be evaluated considering the application of accumulated interest immediately after the completion of the deferment period as well as the revised terms, as permitted in terms of paragraph 4 above.

7. The rescheduling of payments, including interest, will not qualify as a default for the purposes of supervisory reporting and reporting to Credit Information Companies (CICs) by the lending institutions. CICs shall ensure that the actions taken by lending institutions pursuant to the above announcements do not adversely impact the credit history of the beneficiaries.

Other Conditions

8. Lending institutions shall frame Board approved polices for providing the above-mentioned reliefs to all eligible borrowers, inter alia, including the objective criteria for considering reliefs under paragraph 4 above and disclosed in public domain.

> 9. Wherever the exposure of a lending institution to a borrower is Rs.5 crore or above as on March 1, 2020, the bank shall develop an MIS on the reliefs provided to its borrowers which shall inter alia include borrower-wise and credit-facility wise information regarding the nature and amount of relief granted.
>
> 10. The instructions in this circular come into force with immediate effect. The Board of Directors and the key management personnel of the lending institutions shall ensure that the above instructions are properly communicated down the line in their respective organisations, and clear instructions are issued to their staff regarding their implementation."

5. The contention of the petitioner referring to the above circular issued by the RBI is to the effect that the circular was applicable to the borrowings of the petitioner from respondent no. 2, inasmuch as, a moratorium on payment of interest ought to have been provided. In other words, payment of interest on the petitioner's loan ought to have deferred by respondent no. 2 post the Covid period, and for such reason the terms and conditions as agreed in the sanction letter/contract between the parties would stand modified. It is on such interpretation of the aforesaid circular the petitioner moved the RBI in Grievance Redressal mechanism, i.e., the Ombudsman.

6. The petitioner's complaint before the Ombudsman is dated 5 January,2021. The Ombudsman had called for the response to the petitioner's complaint from respondent no. 2, which was submitted by respondent no. 2 on 15 February, 2021, a copy of which is annexed to the reply as filed on behalf of RBI, (page 156). In its reply, respondent no. 2 contended that there was a complete misreading of the RBI guidelines by the petitioner and that such

moratorium as claimed by the petitioner even on a plain reading of the RBI circular could not be inferred, as contended by the petitioner. The relevant portion of the reply filed by respondent no. 2 before the Ombudsman reads thus:

> "From the above details which are reproduced from the loan sanction letter issued to you while granting loan, the following aspects manifests therein:
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> 1. Loan amount is Rs 6,00,000/-.
> 2. Agreed Interest rate is 25% pa (not 1% per month as has been mentioned in your email)
> 3. The loan tenure is 365 days.
> 4. The loan is EMI free and only interest is payable during loan tenure.
> 5. The person who chooses to pay the interest earlier than 365 days will be granted rebate in payment of interest as per the schedule mentioned above.
>
> Misconception of interest @1% per month
>
> It is clarified from the above that the interest rate is 25% pa and not 12% p.a/1% per month. From the above table, it is clear that if the customer pays the interest within 30 days, then automatic rebate of 13% p.a. would be granted to him by the system and effective rate of interest will become @ 1% per month / 12% per annum and so on as per the above schedule
>
> Your goodself have not paid the interest within 30 days, so you do not qualify for rebate of 13%. The rebate is calculated by the system without human intervention and depends on when you pay.
>
> Therefore your request to restore interest rate @ 1% per month cannot be acceded. The rebate is granted only to the customers who make payment as per schedule mentioned above.
>
> **Plea that branches have been closed so interest could not be deposited**
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> The plea is not tenable as the Muthoot promotes and accepts the online payments thorough e-channels which can be made 24 X 7, most of the customers having high Value loans have opted online mode Misinterpretation of RBI Guidelines dated 27 March 2020
>
> We observe that there is a misinterpretation of the guidelines of

RBI with regard to the Moratorium which was granted for three months to the persons paying EMI to the financial Institutions. It is stated that Gold loan of Muthoot does not entail any EMI as it is EMI free loan The customer has to pay only interest which has not been exempted by the RBI in its quidelines

RBI have also not ass any direction to NBFCs of the financial Institution to forgo the interest for the period of lockdown. Clause 5 of the RBI guidelines are reproduced as under for your reference

5. Since the moratorium deferment recalculation of the drawing power is being provided specifically to enable the borrowers to tide over economic fallout from COVID-19, the same will not be treated as concession or change in terms and conditions of loan agreements due to financial difficulty of the borrower under paragraph 2 of the Annex to the Reserve Bank of India (Prudential Framework for Resolution of Stressed Assels) Directions, 2019 dated June 7, 2019 ("Prudential Framework"). Consequently, such a measure, by itself, shall not result in asset classification downgrade.

Clause 5 specifically states that concession of moratorium shall not be treated as concession or change in terms and conditions of loan agreements. Moratorium only defer the Installment/EMI it does not wipe out the accrued interest during the lockdown period. It is therefore submitted that the RBI guidelines should not be misinterpreted against us to seek waiver of interest which even otherwise also is not permissible. As stated in our earlier email dated 27.08.2020, we have already extended loan tenure by 90 days as per RBI guideline and we are not charging any penal interest for the said period but applicable interest is required to be paid up.

We believe that above clarification would adequately explain the correct situation with regard to the terms @ condotions laid down in loan sanction letter and the RBI guidelines.

We understand that being from the finance field you would appreciate the facts stated above and accordingly pay the interest and avail rebates."

7. Taking into consideration the rival contentions, the Ombudsman informed the petitioner that the complaint would stand closed, as there was no deficiency of service found on the part of respondent no. 2-NBFC. It was also recorded that despite the closure of the petitioner's complaint before the Ombudsman against respondent no. 2-NBFC, the petitioner was at liberty to

approach the Civil Court of competent jurisdiction or such other authority in accordance with law for redressal of the petitioner's grievance. It was also recorded that the Ombudsman's order was not an appealable order. Being aggrieved by such communication made by Ombudsman, the petitioner is before the Court seeking reliefs as noted by us in the foregoing paragraphs.

8. The thrust of the petitioner's contention is on the RBI's Circular as noted by us above, under which according to the petitioner, there was a moratorium on interestfor the Covid-19 period. We may observe that in the present context what is relevant in the Circular are paragraphs 2 and 8, which categorically provide in regard to 'Rescheduling of Payments on Term Loans and Working Capital facilities' to *inter alia* provide that in respect of all term loans including that of the NBFC's, such institutions are permitted to grant a moratorium of three months on payment of all installments, the installments as specifically referred at the bottom of the Circular would include the payments falling due from March 1, 2020 to May 31, 2020, the principal and/or interest components; bullet repayments; equated monthly installments; and credit card dues. Paragraph 2 of the said circular provides that the repayment schedule for such loans as also the residual tenure would be shifted across the board by three months after the moratorium period and that interest shall continue to accrue on the outstanding portion of the term loans, during the moratorium period. Further in paragraph 8, under the heading "Other Conditions", it is clarified

that the Lending institutions shall frame Board approved policies for providing the said reliefs to all eligible borrowers *inter alia* including the objective criteria for considering reliefs under paragraph 4 which was in regard to 'Easing of Working Capital Financing', which is not the issue in the present case. Thus, the insistence on the part of the petitioner to claim a total exemption and/or immunity from payment of interest for the period as asserted by the petitioner, is certainly not as to what has been contemplated by the circular, issued by the RBI in paragraph 2, which we have noted.

9. In the circumstances, as discussed above, we find that there is no illegality in the Ombudsman closing the petitioner's compliant and that too after taking into consideration as to what was set out by respondent no. 2 in the reply dated 15 February, 2021. We do not find that Ombudsman has committed any error or any perversity in taking the decision in applying the stipulations as brought about by the RBI Circular and more particularly paragraph 2 of such Circular, so that the entire Covid period can be considered to be a period during which it could be said that the petitioner was not required to pay any interest. Certainly, such interpretation cannot be inferred from the plain language of paragraph 2 of the Circular. We, therefore, find no illegality in the impugned decision taken by Ombudsman.

10. In any event, insofar as the reliefs as prayed by the petitioner against respondent no. 2 are concerned, in our opinion, the petition is not maintainable, as respondent no. 2 is private financial entity being not an instrumentality of the State within the meaning of Article 12 of the Constitution. The law in this regard is well settled (See : *Federal Bank Ltd. vs. Sagar Thomas & Ors., (2003) 10 SCC 733*). Thus, considered from any angle, the petition is devoid of merits. We, however, clarify that if the petitioner has any dispute as also recorded by the Ombudsman, the petitioner has an alternate remedy which the petitioner is free to adopt.

11. Before parting, we may also make an observation that merely because the petitioner was appearing in person, he cannot be seeking unwarranted indulgence from the Court. We say so as it can be seen that several orders were passed by this Court and substantial judicial time appears to have been spent. Successive adjournments were granted on an indulgence being shown to the petitioner, as a result of which bulky record is created. In fact, this would be a fit case to dismiss the petition with compensatory cost, however, we refrain from doing so.

12. The Writ Petition stands dismissed. No costs.

(FIRDOSH P. POONIWALLA, J.) **(G. S. KULKARNI , J.)**