IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

205 **CWP-10745-2018**
Date of Decision: 19.01.2024

UNION BANK OF INDIA

... Petitioner

VERSUS

RAJ BALA & ORS

... Respondents

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

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Present: Mr. P.S. Bedi, Advocate
for the petitioner.

Mr. Satyaveer Singh, Advocate
for the respondents.

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VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order dated 25.05.2017 passed by the Permanent Lok Adalat (Public Utility Services), U.T., Chandigarh.

Briefly summarized, the facts of the present case are that the respondents-applicants had taken a loan of Rs.2 crores, in their individual capacity against loan application dated 25.09.2012, on the deposit of property documents i.e. title deeds and other documents in respect of SCF No.94, Sector 40-C, Chandigarh as an equitable mortgage. The abovesaid loan amount was to be repaid in 107 equated monthly installments at a floating rate of interest of 13.25% per annum. It had been claimed by the respondents-applicants, that they had been assured that no foreclosure charges will be levied in case they wanted to clear the loan amount before the repayment term. It was averred that the petitioner-Bank, being a nationalized bank, is governed by and is mandated to follow the guidelines/instructions issued by the Reserve Bank of India from time to time. The respondents-applicants claimed that they had been paying the installments regularly as per the agreement. However, after having arranged for sufficient finances to repay the entire loan amount, the respondents-applicants' cleared the loan amount on 22.12.2015 by depositing an amount of Rs.1,39,81,815/-. The petitioner-Bank, however, refused to return the documents of the abovesaid mortgaged property and to issue the NOC (No Dues Certificate) pertaining to the loan account and respondents-applicants were directed to pay the additional foreclosure/prepayment charges to the tune of Rs.3,03,958/-. A legal notice was thereafter served by the respondents-applicants to the petitioner-Bank seeking return of the documents. Evincing no response, an application under Section 22-C of the Legal Services Authorities Act, 1987 was preferred before the Permanent Lok Adalat (Public Utility Services), U.T., Chandigarh for return of the original title deeds and documents pertaining to the property i.e. SCF No.94 (supra). However, at the same time, on account of compelling circumstances, the respondents-applicants deposited the abovesaid amount for securing release of the property documents, without prejudice to their rights.

The petitioner-Bank submitted its reply before the PLA and placed reliance on the sanction letter dated 05.02.2013 to contend that the petitioner-Bank is entitled to levy penalty at the rate of 2%, in the event the loan account is sought to be cleared prior to the completion of the term of the loan. The relevant Clause reads thus:

> *"XXXX XXXX XXXX*
>
> *4. Takeover penalty of 2% shall be levied in case the loan account is taken over by other banks or financial institutions or*

the loan is adjusted out of funds borrowed from third party. However, no penalty will be levied if the loan account is adjusted out of own verifiable and legitimate source of funds. The onus of proof for the same rests with the borrower. In addition normal rate of interest as applicable on date of sanction, i.e. BR + 3.755 = 14.25% will be charged ab-initio and recovered along with take over penalty.

XXXX XXXX XXXX"

It is contended that as per the above clause, the respondents-applicants could not have set off/foreclose their loan account by borrowing money from any third party and the loan account ought to have been cleared from their own verified and legitimate sources of funds. The respondents-applicants got their loan account taken over by Aditya Birla Finance Ltd., hence, they were liable to pay the penalty as per the conditions of the sanction letter. The documents were thus rightly withheld by the petitioner-Bank, in terms of the contract executed between the parties, and fill clearance of the penalty. It is further stated that the said foreclosure penalty having already been deposited, the documents stand released.

Reconciliation efforts on the part of the Permanent Lok Adalat (Public Utility Services), U.T., Chandigarh failed to fructify in dispute resolution. Hence, adjudication under Section 22-C(8) of the Legal Services Authorities Act, 1987 was undertaken.

Upon consideration of the evidence led by the parties and the documents brought on record, the Permanent Lok Adalat (Public Utility Services), U.T., Chandigarh allowed the application and directed the petitioner-Bank to refund the prepayment penalty of Rs.3,03,958/- levied upon the respondents-applicants alongwith interest @ 12% per annum from the date of deposit till its realization. Additionally, a sum of Rs.20,000/- was also awarded to the respondents-applicants for mental and physical harassment and Rs.15,000/- towards litigation charges.

Counsel for the petitioner has vehemently argued that the Permanent Lok Adalat (Public Utility Services), U.T., Chandigarh has placed reliance upon the judgment of this Court in the matter of ***"Gyankund Trust Versus Punjab National Bank and another"*** passed in ***CWP-7159 of 2013 on 16.03.2016***. The said judgment rather supported his case inasmuch as the levy of the prepayment penalty in the said case was held to be bad since there was no such clause in the agreement executed between the parties. Per contra, since such a clause was there in the letter of sanction and the agreement executed between the parties, hence, the petitioner-Bank would be entitled to levy the said prepayment penalty. The Award is thus liable to be set aside on this score alone. He further contends that the reference to the letter/circular issued by the Reserve Bank of India dated 07.05.2014 is also misconceived since the letter of sanction was issued in the present case on 05.02.2013. Since the condition of 'prepayment penalty' had been already prescribed thereunder, the circular of 07.05.2014 cannot come to the aid of the respondents-applicants as the same can only be made applicable for the loans that have been sanctioned after the issuance of the said circular and not to the loans sanctioned earlier.

Responding to the said arguments, counsel for the respondents-applicants-borrower submits that the arguments of the petitioner-Bank are misconceived. The petitioner being a nationalized bank is governed by the circulars issued by the Reserve Bank of India. The said circular deals with all foreclosure/settlement of loans irrespective whether the loans are sanctioned post or prior to issuance of the said circular. The circular relates to foreclosure of loan and would apply to the prepayment that takes place after the date of circular. If the Reserve Bank of India intended the circular to apply only to the loans sanctioned after the issuance of the circular, it would have specifically incorporated and confined the operation of the said circular. Rather, the circular prohibits the banks from charging prepayment penalty/foreclosure charges with immediate effect. The prohibition being absolute, the petitioner-Bank could not have sought enforcement of the terms of the letter of sanction dated 05.02.2013 as such enforcement was clearly violative of the circular issued by the Reserve Bank of India which is binding on the petitioner-Bank. The crucial date for ascertaining applicability of the circular is the date on which an application for prepayment of the loan is made and not the date of sanction of the loan. He further contends the abovesaid circular of 07.05.2014 was issued in continuation of the earlier circular dated 05.06.2012 which had highlighted the problems of home loan borrowers in shifting to cheaper financing sources and the home loan borrowers being deprived of the benefit of lower interest rate. The discontinuance of foreclosure charges/ prepayment penalty was aimed to lead to reduction in the discrimination between the existing and the new borrowers and increase competition amongst banks and resultant fair pricing of the floating rate of home loans. It is contended that the circular had been issued with an object to facilitate the borrowers to shift from one loan financing source to another, wherever cheaper charges are applicable, hence, the arguments of the petitioner-Bank is contrary to the object behind the said circulars and rather protects the mischief sought to be curbed by the Reserve Bank of India.

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 most question for consideration is whether the petitioner-Bank would be entitled to claim prepayment penalty of 2% in terms of Clause-4 of the letter of sanction dated 05.02.2013 or not?

While the case of the petitioner-Bank is that the subsequent circular of 2014 would not be applicable for loans sanctioned prior to issuance of the said circular, the contention of the respondents-applicants is that the said circular would apply irrespective of the date of sanction of the loan.

Before proceeding further in the matter, it needs to be seen as to how the Permanent Lok Adalat (Public Utility Services), U.T., Chandigarh dealt with the objections of the bank while passing the impugned Award. The relevant extract thereof reads thus:

"XXXX XXXX XXXX

The applicants have submitted annexure C-1, a copy of sanction letter dated 05.02.2013 whereby the loan in the sum of Rs.2 crore was sanctioned in favour of the applicants for the purpose of union mortgage under Union Mortgage Loan Scheme and in para-4 of this letter it was provided that take-over penalty of 2% shall be levied in case loan account was taken over by some other Bank or financial institution. Annexure C-2 is the statement of account prepared by Union Bank of India showing that on 22.12.2015 the balance was zero in this account. Also, the applicants have submitted a letter dated 21.02.2013 addressed to the Manager Union Bank of India, Sector-21, *Chandigarh that the purpose of loan was renovation/repairs and updation of their property i.e. SCO-94, Sector-40-C, Chandigarh and the Bank was requested to issue a letter mentioning this very purpose so that the applicants could submit that letter to the E.O. The applicants have also submitted a letter dated 23.12.2015 annexure C- 3, addressed to the Bank Manager stating that the applicants had obtained term loan of Rs.2 crore and that he wanted to close the account by take-over from Aditya Birla Finance. It has further been mentioned in this letter that though the Bank had demanded pre- payment charges but as per circular of Reserve Bank of India, copy of which is annexure C-5, dated 07.05.2014 issued by Reserve Bank of India when term loan has been sanctioned at floating rate of interest In the name of individuals, pre-payment charges cannot be claimed by the Bank. The matter communicated through the circular dated 07.05.2014 is reproduced as under:-*

RESERVE BANK OF INDIA

www.rbi.org.in

RB1/2013-14/582
DBOD.Dir.BC.No.110/13.03.00/2013-14 *May 7, 2014*

All Scheduled Commercial Banks
(Excluding RRBS)

Dear Sir/Madam

Levy of foreclosure charges/pre-payment penalty on Floating Rate Term Loans.

Please refer to our circular DBOD No. Dir. BC. 107/13.03.00/ 2011-12 dated June 5, 2012 on "Home Loans-Levy of Fore-closure Charges/Pre-payment Penalty".

2. A reference is invited to Part B of the First Bi-monthly Monetary Policy Statement 2014-2015 announced on April 1, 2014 proposing certain measures for consumer protection. It was indicated that in the interest of their consumers, banks should consider allowing their borrowers the possibility of prepaying floating rate term loans without any penalty. Accordingly, it is advised that banks will not be permitted to charge foreclosure *charges/pre-payment penalties on all floating rate term loans sanctioned to individual borrowers with immediate effect.*

Yours faithfully,

(Prakash Chandra Sahoo)
Chief General Manager.

The loan sanctioned in favour of the applicants was certainly in favour of individuals and also floating rate of interest was charged from them. In such circumstances, pre-payment charges/penalty/foreclosure charges could not be charged from them. This circular is very clear about it.

XXXX XXXX XXXX"

It is evident that the Permanent Lok Adalat (Public Utility Services), U.T., Chandigarh placed reliance on the circular dated 07.05.2014 to hold that after the coming into force of the said circular, the petitioner-Bank could not have raised a demand for take-over penalty at the rate of 2%. It is also evident from a perusal of the abovesaid circular that the same was issued in continuation of earlier circular of 05.06.2012. The said circular had drawn its force from paragraph 81 to 83 of the monetary policy statement of 2012-13 announced on 17.04.2012 with regard to home loans on floating interest rates. The Committee had observed that the foreclosure charges levied by banks on prepayment of home loans were resented upon by the home loan borrowers across the board and reflected the hesitancy/ resistance on the part of the banks in passing on the benefits of lower interest rates to the existing borrowers in a falling interest rate scenario. The practice of levying prepayment penalty/ foreclosure charges was a restrictive trade practice deterring the borrowers from switching over to the cheaper available sources. It was thus required that a uniform policy ought to be adopted and the banks were ordered not to charge foreclosure charges/ prepayment penalties on home loans. The said circular is extracted as under:-

"RBI 2011-12/589
DBOD. No. Dir. BC. 107/13.03.00/2011-12 *June 5, 2012*

All Scheduled Commercial Banks
(Excluding RRBs)

Dear Sir/Madam

Home Loans-Levy of fore-closure charges/pre-payment penalty

Please refer to our circular DBOD. No. Dir. BC. 56/13.03.00/2006-2007 dated February 2, 2007 on reasonableness of bank charges.

2. In this context, attention is invited to paragraphs 81 to 83 of the Monetary Policy Statement 2012-13 announced on April 17, 2012 with regard to home loans on floating interest rates. The Committee on Customer Service in Banks (Chairman: M. Damodaran) had observed that foreclosure charges levied by banks on prepayment of home loans are resented upon by home loan borrowers across the board especially since banks were found to be hesitant in passing on the benefits of lower interest rates to the existing borrowers in a falling interest rate scenario. As such, foreclosure charges are seen as a restrictive practice deterring the borrowers from switching over to cheaper available source.

3. The removal of foreclosure charges/prepayment penalty on home loans will lead to reduction in the discrimination between existing and new borrowers and competition among banks will result in finer pricing of the floating rate home loans. Though many banks have in the recent past voluntarily abolished pre-payment penalties on floating rate home loans, there is a need to ensure uniformity across the banking system. It has, therefore, been decided that banks will not be permitted to charge foreclosure charges/pre-payment penalties on home loans on floating interest rate basis, with immediate effect.

Yours faithfully,

(Deepak Singhal)
Chief General Manager-in-Charge"

The abovesaid circular was thereafter extended to individual borrowers vide the circular dated 07.05.2014. The principle applicable for granting the initial exemption in favour of the home loan borrowers would also get attracted as the rationale for extending the benefit of abovesaid circular and giving such benefits to the individual borrowers. As the circular dated 07.05.2014 is in continuation of 05.06.2012, the intent behind circular dated 05.06.2012 can directly be taken into consideration for determining the object behind circular dated 07.05.2014. The circular of 2012, as an external aid to interpretation of documents, can be looked into for the purpose of arriving at the correct intent behind the issuance of the circular of 07.05.2014. The preceding documents, as an external aid to interpretation, are legally permissible as per the principles governing interpretation of statutes and contracts.

Even otherwise, if the argument of the counsel for the petitioner-Bank is to be accepted, there was no impediment on the Reserve Bank of India to clarify the same and to specifically state that the said circular was to apply only with respect to the loans sanctioned after the date of coming into force of the circular, however, the circular imposes a prohibition against levy of foreclosure charges/prepayment penalty on all floating rate term loans sanctioned to individual borrowers with immediate effect. Hence, the Reserve Bank of India never intended to keep the benefit of the abovesaid circular confined only to the loans that are sanctioned post issuance of the said circular and rather, the benefits were required to be made available to all loans that had been sanctioned irrespective of the date of their approval. The mischief sought to be curbed being that the benefit of reduction in the rate of interest ought to be passed to the ultimate consumer, the acceptance of the interpretation of the counsel for the petitioner-Bank would defeat the very object behind issuance of the said circular.

Secondly the circular of 2012 itself was a decision of the RBI that Banks would not be permitted to charge pre-payment penalties on home loans floating rate basis, with immediate effect. The said circular was issued on 05.06.2012 while the application was submitted on 25.09.2012 and loan was sanctioned on 05.02.2013. Initially the benefit was only w.r.t home loans but the circular of 2014 extended the said benefit to all 'individual borrowers', for the same reason. The benefit was thus extended on all floating rate term loan "sanctioned" to the individual borrowers. It thus was a past tense while referring to term loans sanctioned and does not use the expression "to be sanctioned…..". The collection of charge was thus prohibited after the circular of 2014 and there could not be a separate class of borrowers-after 2014 being given a better advantage over earlier borrowers.

The argument of the petitioner is also bad since the reliance of the petitioner-Bank, for claiming said benefit, is only on the clauses of the contract executed between the parties. The law requires no clarification that every contract has to be compliant of the applicable law. Being a nationalized bank, the petitioner-Bank is governed by the circulars issued by the Reserve Bank of India and it cannot plead that notwithstanding the circulars/orders issued by the Reserve Bank of India, the petitioner-Bank would nonetheless be entitled to claim the prepayment penalty on the strength of the contract executed between the parties. Any such charge which runs contrary to law would be illegal. A contract cannot be given prominence above the law and instead, it has to be read as per law in force.

The Permanent Lok Adalat (Public Utility Services), U.T., Chandigarh rightly appreciated the position of law and the scope of the circular as well as the intent and object thereof and found that the respondents-applicants being an individual borrower was entitled to the benefit of the said circulars since settlement of loan in question took place on 22.12.2015, which was after the coming into force of the said circular. The right created in favour of the respondents-applicants, by virtue of the said circular issued by the Reserve Bank of India, cannot be defeated on the strength of the conditions in the sanction granted by the petitioner-Bank on 05.02.2013.

There is thus no illegality, perversity or impropriety in the impugned Award dated 25.05.2017 passed by the Permanent Lok Adalat (Public Utility Services), U.T., Chandigarh. The petitioner-Bank has forced the consumer to undergo protracted litigation by misapplying and misinterpreting the statutory provisions and showing scant regard to the circulars issued by the Reserve Bank of India. The same caused agony to a consumer and also forced him to incur legal expenses in fending for their rights not only before the Permanent Lok Adalat (Public Utility Services), U.T., Chandigarh but also before this Court. The conduct of the bank is deprecated. Even though this Court was inclined to impose heavy costs on the petitioner-Bank for such a gross irresponsible conduct, however, on the persistent requests being made by the counsel for the petitioner-Bank, this Court abstains from imposing costs.

In view of discussions and observations recorded hereinabove, the present petition stands dismissed and the impugned Award dated 25.05.2017 passed by the Permanent Lok Adalat (Public Utility Services), U.T., Chandigarh is hereby affirmed.

(VINOD S. BHARDWAJ)
JANUARY 19, 2024 **JUDGE**
rajender

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