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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CONT.CAS(C) 344/2024 & CM APPL. 12466/2024

M S IREO PRIVATE LIMITED ..... Petitioner

Through: Mr. Gagan Gandhi with Mr. Akshay Malik, Advocates.
(M): 9818085505
Email: gagankrgandhi@gmail.com

versus

RESERVE BANK OF INDIA & ANR. ..... Respondents

Through: Mr. Atul Sharma with Mr. Abhinav Sharma and Mr. Ayush Srivastava, Advs.
M: 9557423051
Mr. Ateev Mathur & Mr. Amol Sharma, Advs. for R-2.
M: 9958609042

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

O R D E R

% **29.02.2024**

CM APPL. 12466/2024 (For Exemption)

1. Exemption allowed, subject to just exceptions.

2. Application is disposed of.

CONT.CAS(C) 344/2024

3. The present contempt petition has been filed alleging willful disobedience of the order dated 16th December, 2022 passed in *W.P.(C) No. 14687/2022*, wherein directions were issued to the respondent no.1 -

Reserve Bank of India ("RBI") to decide and adjudicate upon the representation of the petitioner dated 26th November, 2019. There were further directions to the respondent no.1 to pass a reasoned and speaking order.

4. Learned counsel appearing for the petitioner submits that the respondent no.1 has passed an order dated 10th February, 2023, which is non-speaking, ambiguous and vague by which the representation dated 26th November, 2019 of the petitioner has been disposed of. He further submits that aggrieved by the order dated 10th February, 2023, the petitioner had filed a writ petition bearing *W.P.(C) No. 4260/2023* titled as *M/S Ireo Private Limited Versus RBI and Another*, seeking direction to respondent no.1 to pass a speaking order upon the representation dated 26th November, 2019 made by the petitioner.

5. It is submitted that the petitioner withdrew the aforesaid writ petitioner being *W.P. (C) No. 4260/2023* in terms of order dated 06th September, 2023, in order to avail appropriate remedy. Thus, the present petition has been filed.

6. Per contra, learned counsel appearing for respondent no.1 submits that order dated 10th February, 2023 passed by the RBI is a reasoned and speaking order, wherein all the contentions raised by the petitioner were considered.

7. Learned counsel appearing for respondent no.2 submits that the petitioner has already availed all his remedies. He submits that no contempt has been committed in the present case, as the order dated 16th December 2022 has already been complied with.

8. He further submits that subsequent challenge to the order dated 10th

February, 2023 passed by respondent no.1 has been withdrawn by the petitioner.

9. I have heard learned counsels for the parties and have perused the record.

10. At the outset, this Court notes the order dated 16th December, 2022 passed in *W.P.(C) No. 14687/2022*, the relevant portion of which is extracted as bellow:

> *"xxx xxx xxx*
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> *6. Since the petitioner's representation to the respondent no.1 dated 26.11.2019 remains unanswered till date, the petition is disposed of by directing respondent no.1 to consider the petitioner's aforesaid representation (Annexure- 10 to the writ petition) and decide the same within a period of eight weeks by passing a reasoned and speaking order.*
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> *7. Needless to state, this Court has not expressed any opinion on the merits of the petitioner's claim and therefore, in case, the petitioner is aggrieved by any order passed by respondent no.1, it will be open for them to seek legal recourse as permissible in law.*
>
> *xxx xxx xxx"*

11. Reading of the aforesaid order shows that directions had been issued to respondent no.1 to dispose of the representation dated 26th November, 2019 of the petitioner by passing a speaking order.

12. By order dated 10th February, 2023, the representation of the petitioner has been disposed of by respondent no.1, wherein it has been held as follows:

> *"xxx xxx xxx*
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> ***Analysis and conclusion by RBI***
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> *7. The submissions made by the company in its representation referred above and also the submissions made by the bank have been*

carefully considered. The submission made by the company in its representation is that the bank has charged 2% per month compounded monthly as penal interest on overdue amount which translates into approximately 26.82% per annum when the base interest rate is only 14.50% per annum. According to the company, this action of the bank is contrary to the policy contained in the Master Direction. Therefore, the representation of the company and also the order passed by the Hon'ble High Court mentioned above, make it clear that the limited question that arises for consideration is whether impugned conduct of the bank in charging 2% per month as penal interest is in violation of the guidelines contained in the Master Direction.

8. It is observed that paragraph 5 of the Master Direction deals with the subject 'penal interest' and the same reads as follows:

'Banks shall formulate a Board approved policy for charging penal interest on advances which shall be fair and transparent. The rate of penal interest shall be decided after taking into account incentive to service the debt and due regard to genuine difficulties of customer.'

It is clear from the above that RBI has not stipulated any fixed rate as regards 'penal interest' that can be charged by banks. The only requirement as contained in the Master Direction is that there has to be a Board approved policy which shall be fair and transparent. The contention taken by the bank is that the penal interest originally applicable was 3% per month which was subsequently reduced to 2% per month. The sanction letter dated September 28, 2017 and its modification dated November 10, 2017 supports the bank's claim that rate of penal interest was reduced from 3% per month to 2% per month. Therefore, there may not be any merit in an argument that there was no transparency in the rate of penal interest charged by the bank. The bank has also placed on record a copy of its Corporate Credit Policy as approved by its Board on August 18, 2017, which was applicable during the relevant time in compliance with the requirement contained in the Master Direction issued by RBI. As per paragraph 43(x) of this policy document, 'Penal interest may be levied by the Bank for reasons such as default in repayment, non-submission of financial statement etc. This will be in accordance with guidelines laid down by Credit Committee from time to time'. The bank has not produced any guidelines laid down by the Credit Committee as referred to in the Board approved policy. Therefore, there is doubt on the question whether the Board approved policy as produced by the bank does satisfy the requirement of the Master Directions under which there has to be a Board approved policy that is fair and *transparent.*

9. In the representation, the company has requested for an order directing the bank to refund the penal interest collected. Although, there can be doubts on the question whether the policy of the bank as discussed above, satisfies the requirements under the Master Directions, there cannot be any doubt on the question that the rate of penal interest as claimed by the bank was within the knowledge of the company and was accepted by the company. As such, in case the contract entered by the company with the bank has to be quashed on the ground that the penal interest is against 'public policy' as contended by the company, such disputes will have to be raised before a civil court of competent jurisdiction. As such, it will not be possible for the Reserve Bank of India to issue any direction requiring the bank to refund the amount collected under a contract entered between them. The representation is therefore without merit and hence disposed of.

Dated this 10th day of February 2023."

13. Perusal of the aforesaid shows that respondent no.1 has passed an order in compliance of the directions passed by this Court vide order dated 16th December, 2022. Therefore, this Court is of the view that no contempt of Court has been committed by the respondent no.1.

14. At this stage learned counsel appearing for the petitioner submits that the RBI itself stated in its order dated 10th February, 2023 that there is doubt on the question whether the Board approved policy as produced by the respondent no.2 satisfies the requirement of the Master Directions, under which there has to be a Board approved policy which is fair and transparent. He further submits that the RBI in its order dated 10th February, 2023 has also raised doubts whether the policy of the bank satisfies the requirements under the Master Directions.

15. If that be the case, the petitioner is at liberty to seek remedy in

accordance with law with respect to the policy followed by the respondent no.2, qua which even the RBI has raised its doubts in its speaking order dated 10th February, 2023.

16. Needless to state, this Court has not expressed any opinion on the merits of the case of either of the parties. The rights and contentions of all the parties are left open.

17. With the aforesaid directions the present contempt petition is disposed of.

MINI PUSHKARNA, J

FEBRUARY 29, 2024/kr