2024:DHC:8745

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

% ***Date of Decision: 11th November, 2024***

\+ W.P.(C) 15671/2024 & CM APPL. 65827-65828/2024

PP JEWELLERS (EXPORT) & ORS. .....Petitioners

Through: Mr. Ayush Jindal with Mr. Jayant Bhatia and Mr. Harshit Chaudhary, Advocates.

versus

UNION BANK OF INDIA .....Respondent

Through: Mr. O.P. Gaggar with Mr. Sachindra Karn, Advocates.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT *(oral)*

1. The situation is little unusual here.

2. Petitioners had earlier also filed a petition challenging the order passed by the *Review Committee* on 28.02.2023.

3. The prime grievance was that such order was a non-speaking order.

4. This Court while dealing with the above said writ petition i.e. W.P.(C) 8972/2023, after considering the above said submission and after noticing the stand taken by the petitioners as well as the order passed by the Review Board, came to the conclusion that the grounds mentioned in the representation were not duly considered by the *Review Committee* and, therefore, this Court, without commenting anything on the merits of the case, directed such *Review Committee* to pass *speaking order* in accordance with law after considering the

representation made by the petitioners. The matter was, accordingly, remanded back to the *Review Committee.*

5. The Review Committee has considered the above said matter, again, in light of the above said directions and came to the same conclusion and has held the petitioners as *wilful defaulters*.

6. Such order is dated 13.03.2024 which was communicated to the petitioners on 29.04.2024.

7. The order is, once again, challenged by the petitioners on the same ground.

8. It is contended that there is no change in the order in the sense that the submissions made by the petitioners have not been considered at all and they have been declared *wilful defaulters,* without giving any observation with respect to their submissions.

9. The submissions made by them before the learned Review Committee are contained in Annexure P-3 which runs into 300 odd pages. It is also submitted that though the petitioners were borrowers but the "collateral" offered in relation to the loan in question was actually owned by the guarantor and it was the guarantor who had sold the above said 'collateral' without taking any permission or knowledge of the Bank or, for that matter, of the borrower. Though it is admitted by learned counsel for the petitioners that the liability of a principal debtor i.e. borrower and guarantor is co-extensive but, at least, the *Review Committee* should have considered his representation and should have given some observation, either way with respect to those. It has been contended that the *Review Committ*ee has, merely, proceeded on the premise that the shops were constructed on said

property and were sold and, therefore, it was enough to label the borrower as *wilful defaulters*. It is submitted that same reason was given by the *Review Committee*, even earlier and, therefore, the directions of this Court have not been complied with.

10. During course of the arguments, learned counsel for the petitioners submitted that the loan in question was though to the tune of Rs.55 crores, there was only one immovable property having worth Rs.4.2 crores, which was offered as collateral and part of the loan amount was secured by way of jewellery articles worth Rs.20.85 crores.

11. Learned counsel for the respondent appears on advance notice and states that since the construction had been done in an illegal manner and the shops were sold without knowledge and permission of the Bank, no fault can be found in the impugned order.

12. Be that as it may, this Court has seen the previous order passed by the Review Committee on 28.02.2023 and also the last order dated 13.03.2024 and except for recording the factual aspects, the reasoning part is contained in one para only, which reads as under:-

- *After going through all facts, the committee is of the view that the mortgagor of the property (property No. 8743, Ward No. XIV, situated at Shidipura, Karol Bagh, New Delhi) constructed shops on the said property and subsequently sold those shops to various individuals without prior permission from our Bank. When the Bank initiate SARFAESIA action on the property, the shops owners filed suits/ appeal in DRT for granting stay of the physical possession of the property.*
- *The Committee concluded that selling/ disposing of piece and parcel of the property offered & mortgaged as collateral security construed as an act of wilful default.*

13. It also seems that the petitioners were not able to apprise the Committee appropriately about their being desirous of offering alternate security as collateral.

14. Moreover, as informed during course of the arguments, *One Time Settlement* (OTS) has also taken place between the parties on 16.07.2024.

15. It is contended by learned counsel for petitioners that in the written submissions, the petitioners made specific reference about the *Master Circular* on *willful defaulters* issued by the Reserve Bank of India way back in the year 2015 and the above said Circular contains elaborate and comprehensive guidelines as to when and under what circumstances anyone can be declared to be *wilful defaulters* and there is no discussion about the same.

16. Undoubtedly, though the *Review Committee* can always form the same view again but as per the specific directions given by this Court, the *Review Committee* was bound to take into consideration the submissions made in the representation. It is quite obvious that there is, virtually, no difference in the reasoning which is found to be there in the previous order and in the reasoning given by the subsequent order passed by the Review Committee.

17. In view of the above, without making any observation with respect to the merits and substance of the submissions contained in the representation made by the petitioners which it had submitted before the *Review Committee*, it would be desirable to request the *Review Committee* to consider the matter afresh and to pass a speaking order, strictly in terms of the directions contained in the previous order dated

16.08.2023 passed by this Court.

18. However, since the matter has already been heard twice by the Review Committee and as agreed by the learned counsel for the petitioners, there would not be any requirement of giving any right of rehearing to the petitioners. However, additional written submissions, if any, may be submitted before the *Review Committee* within two weeks from today.

19. The petition is, accordingly, disposed of in the aforesaid terms.

(MANOJ JAIN)
JUDGE

NOVEMBER 11, 2024
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