(2002) 09 MAD CK 0168

In the Madras High Court

Case No : Writ Petition No. 20288 of 2002 and WMP No. 28096 of 2002

Ajay Kumar Gupta APPELLANT

Vs

The Syndicate Bank RESPONDENT

Date of Decision : 12-09-2002

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2004) 2 BC 230 : (2003) 117 CompCas 358

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : Party in person, for the Appellant; Representative of the Bank, for the Respondent

Final Decision : Dismissed

Judgement

E. Padmanabhan, J.—The writ petitioner prays for the issue of a writ of certiorarified mandamus calling for the records of the first respondent in his office reference No.4815/2913/COMP/C/SR, dated 28.8.2001, quash the same and consequently direct the second respondent Bank to settle the loan accounts of Shantivihar group and M/s. Atomos Exports Private Ltd., under Reserve Bank India''s guidelines applicable to non performing assets and pass such further or consequential order.

2. With the consent of either side, the writ petition itself was taken up for the final disposal.

3. The counsel for the petitioner and the respondents were not present consecutively. But the petitioner submitted his arguments in person. So also the officer of the respondent Bank made his submissions. This court called upon either parties to submit their written arguments. Accordingly, the writ petition as well as the respondent submitted written arguments, which is being considered.

4. The present writ petition has been filed aggrieved by the communication dated 28.8.2001 whereby the respondent bank rejected the petitioner''s proposal for

one time settlement of the debts of his late father''s company in terms of RBI guidelines for non performing assets. It is pointed out by the petitioner that while rejecting the request, the respondent had assigned two reasons which are unsustainable. The first of the reason being that the offer of Rs.40.51 lakhs is too low compared to the value of securities available. The second of the reason which prevailed with the second respondent bank being the proposal has been received after 30.6.2001, which is the last date fixed by RBI guidelines.

5. While challenging the two reasons assigned by the respondents, the petitioner also contended that the contentions/objections raised in the counter that the petitioner is not entitled to invoke the scheme for one time settlement as the borrower has committed fraud and willful default. According to the petitioner such an objection cannot be raised by way of an answer to the petitioner''s claim when the same has not been set out in the objection or relied upon as a reason to decline the petitioner''s request. It is further pointed out by the petitioner that he has come forward with bona fide intention to settle his late father''s debts under the scheme and the respondent''s refusal to apply the RBI guidelines is arbitrary. That apart, it is further contended that no opportunity has been afforded to the petitioner to explain his position before the respondent as to the stand taken which disentitle the petitioner from claiming the benefit of the scheme. The petitioner also relied upon the pronouncement of the Apex Court in Central Bank of India Vs. Ravindran reported in 2002 (2) CTC 354. While elaborating the said contention. It is contended that without affording an opportunity the petitioner''s father ha been stigmatized and the petitioner had been denied of a valuable right of availing the benefit and hence the respondent should be directed to apply the RBI guidelines for one time settlement of his father''s debt.

6. Per contra, the respondent bank contended that the request was made beyond the time prescribed in the RBI Guidelines which was operative only upto 31.1.2001 and extended up to 31.6.2001 on which date the scheme came to an end. The petitioner made a request only on 21.7.2001 and it has been rightly rejected summarily. According to the respondent the petitioner''s father late Sudharshanlal Guptha borrowed monies from the respondent bank for his business of Shanti Vihar, Automas Exports and Sampath & Co., Group. Sudharshanlal Guptha made default in three accounts and even during his lifetime various proceedings were initiated by the respondent bank. The suit instituted on the original side of this court was transferred to the Debt Recovery Tribunal, Chennai and a recovery certificate has already been issued. The said Certificate has also reached finality. The recovery proceedings has reached the advanced stage of sale. The petitioner was resorting to various proceedings to stall the sale of the mortgaged properties by filing W.P.No.3575 of 1999. By order dated 8.3.1999, the petitioner was directed to deposit 1/3rd of the decree amount within six weeks from that date, which he failed to comply. The petitioner thereafter instituted C.S.No.8 of 2000 and sought for stay of sale in O.A.No.20 of 2000. The suit was dismissed on 6.9.2000, while recording a

finding that the petitioner even alienated substantial properties to 3rd parties without securing the consent from the bank for all the alienation. The petitioner also moved the Debt Recovery Tribunal IN I.A.No.837 of 2001 to direct the respondent Bank to settle the dues in accordance with RBI Guidelines. Thereafter the petitioner has filed the W.P.No.12043 of 2001 and sought for stay of sale under the very same context. The said writ petition was also dismissed on 1.7.2001. The present writ petition is third of the series of writ petition filed by the petitioner. The petitioner has not approached the court with clean hands. The petitioner has not made a request for settlement in accordance with RBI guidelines on 21.7.2001. The petitioner claimed a settlement under the RBI guidelines as early as 2.2.2001 when the guidelines were not operative.

7. It is contended by the respondent that guidelines do not cover cases of willful default, fraud and malfeasance. In case of willful default, fraud and malfeasance, the bank has to initiate prompt action for recovery. The petitioner''s case squarely falls under the category of willful default, fraud and malfeasance. According to the respondent after the mortgage and filing of the suit by the respondent bank, late Sudharshanlal Gupta sold the mortgaged properties under various sale deeds as undivided shares and one of them has been included in the typed set of papers. AS seen from the sale deed the vendor Sudharshanlal Guptha has covenanted the purchaser that he and Shanti Vihar Hotel have good, valid, full and unimpeachable title to the property and that it is not encumbered. Such a stipulation in the sale deed is a false statement. Therefore no further investigation or enquiry is required in this behalf. The order passed by this court on the original side speaks volumes against the petitioner and his conduct.

8. On 8.10.1996 late Sudharshanlal Gupta came forward with an offer for settlement with the Bank for a sum of Rs.125 lakhs as seen from the document filed by the respondent bank. On 31.10.1997, the petitioner''s brother offered to pay Rs.170.08 lakhs as one time settlement. The respondent bank accepted the offer of 170.08 lakhs on 24.1.1998 though the total amount due as on 24.1.1998 was in the range of Rs.375.79 lakhs. This approach of the petitioner is clear from the document produced by the respondent. The petitioner''s brother ought to have made payments within two months, but he sought for extension of time by two months by letter dated 26.7.1998. The condition has not been complied.

9. Before the Civil Court, the petitioner produced list containing 54 purchasers and claimed that they have retained a sum of Rs.38,04,004/= for being paid to the respondent bank. But those purchasers when served with a notice by the recovery officer of the DRT, appeared before the said Tribunal and claimed that they have paid the entire amount to late Sudharshanlal Gupta/Shanti Vihar and no money has been retained by them. In the light of the said conduct the respondent contends that the petitioner is not entitled to any relief as such a conduct is fraudulent act and deliberate attempt to screen. The respondent further contends that when an identical application is pending before the DRT, the present writ petition is not maintainable. Further, the order in W.P.No.12043

of 2001 and pendency of I.A.No.837 of 2001 before the DRT is a bar to the present writ petition and it has to be dismissed in limini as not maintainable.

10. The point that arise for consideration are:

(i) Whether the impugned order of rejection by the respondent bank is illegal and liable to be quashed?

(ii) Whether the petitioner could compel the respondent to accept his proposal for one time settlement in terms of RBI Guidelines dated 27th July 2000 as extended?

(iii)To what relief if any?

All the above points could be considered together.

11. This court has to necessarily refer to certain material facts for appreciation of facts. The deceased Sudharshanlal Gupta during his life time on 8.10.1996 approached the respondent bank, submitted a proposal to pay Rs.125 lakhs to settle the entire dues of his Group of Companies to the Syndicate Bank''s Branches of Royapettah, Nandanam and Madras Main Branch and proposed to pay the entire amount within five months from the date of receipt of approval, besides expressed that he is agreeable to pay a sum of Rs.50,000/= in total towards legal expenses incurred by the Bank. Sudharshanlal Gupta passed away on 7.6.1997 and his son Sampathlal Gupta on 31.10.1997 came forward with a proposal to pay Rs.170.08 lakhs. On 24.1.1998, the respondent bank sent a reply to the effect that the competent authority has permitted the petitioner to settle the dues amounting to Rs.375.79 lakhs by accepting Rs.170.08 lakhs and agreed to waive Rs.205.71 lakhs as on 31.12.1997, subject to the condition that within two months the entire sum is paid, besides several other conditions. The petitioner''s brother Sampath Guptha by reply dated 26.3.1998 requested for extension of time by two months while referring to the bank''s letter dated 27.1.1998, besides representing that he has arranged for funds. On 3rd April, 1998, the respondent Bank by reply with respect to the extension sought for, informed that the petitioner has to make a cash down payment of Rs.50% of the original compromise offer of funds and the petitioner should pay overdue interest at 18%. The same has not been complied with.

12. The writ petitioner herein filed W.P.No.3575 of 1999 and by order dated 8.3.1999, this court granted stay subject to payment of 1/3rd of the demand within six weeks from 8.3.1999, besides making it clear that failure to comply with the conditions, the interim order will stand vacated. The condition was not complied with. The respondent bank with reference to the petitioner''s request by its letter dated 7.8.2000 intimated the petitioner hat the offer of Rs.75 lakhs for one time settlement is too low to accept and the offer is not acceptable to the respondent. Such an offer was made on 27.7.2000 for the first time. The petitioner followed the said letter by another letter dated 23.1.2001 requesting the respondent to inform him the amount payable for settlement in terms of the

guidelines issued by RBI. The respondent by letter dated 13.3.2001 drew the attention of the petitioner to its letter dated 27.1.1998 wherein it was agreed to settle the dues by accepting the payment of Rs.170.08 lakhs and the petitioner was called upon to come to the Bank for negotiations. The petitioner followed it with his letter dated 18th June 2001 taking a stand that in terms of RBI circular the total amount payable is only Rs.40,50,956.30 which he is prepared to settle for various accounts which his late father was connected. The above facts are clear from the correspondence exchanged between the parties.

13. The Debt Recovery Tribunal, Chennai after contest of the proceedings issued a recovery certificate in favour of the respondent bank. The Bank preferred an appeal in so far as it was aggrieved by the rate of interest and the appellate tribunal awarded interest at the rate of 15%. The petitioner''s application on the original side of this court pending the suit has been dismissed and also the earlier WMP filed by him in the writ petition has been dismissed for non compliance of the conditions. The Debt Recovery Tribunal has also issued a recovery certificate and the recovery officer initiated action. At that stage, the petitioner moved I.A.837 of 2001 seeking for a direction directing the respondent bank to calculate the amounts due in accordance with the guidelines issued by the RBI. The said application is being opposed and pending with DRT. At that stage, the impugned communication has been sent to the petitioner by the respondent bank intimating that his offer of 40.51 lakhs is not acceptable and it is very low when compared to the Rs.480.41 lakhs and the value of securities available. The above facts are clear from the material papers filed by either side.

14. Admittedly an identical application filed by the petitioner before the DRT in I.A.No.837 of 2001 filed earlier in point of time is still pending. The said Tribunal is competent to decide the said application. Having invoked the jurisdiction of the Debt Recovery Tribunal the petitioner has rushed to this court.

15. The Reserve Bank of India framed a scheme and issued guidelines on 27th July, 2000 for recovery of dues relating to non performing assets of public sector Banks. Clause 3 of the guidelines reads thus:-

"The guidelines will not, however, cover cases of willful default, fraud and malfeasance. The bank should identify cases of willful default, fraud and malfeasance and initiate prompt action against them."

16. The guidelines also prescribes that it shall remain operative till 31st March 2001. The guidelines also prescribes the standard formula to be followed by the sanctioning authority and the rate at which the settlement could be arrived at. Assuming that the petitioner has made a request in time, the amount offered by the petitioner is far below the amount as prescribed by standard formula of settlement prescribed by the RBI guidelines. The RBI guidelines has been issued on 27/7/2000 and it was in force till 30.6.2001. Thus the respondent is under an obligation to consider the petitioner''s request and to apply the RBI guidelines for settlement if the petitioner has approached the bank at least before 30.6.2001

and not at any time later thereof. But, admittedly, the petitioner has approached the respondent bank only on 21.7.2001 and offered a very low sum as one time settlement. The request of the petitioner being belated and too low, the respondent has no obligation to consider.

17. The petitioner cannot compel the respondents to apply the RBI guidelines to settle the dues as the obligation, if any, on the part of the respondent-bank ceases on and after 30.6.2001 and the RBI Guidelines is no longer effective and cannot be enforced. That apart, the petitioner has been adopting dilatory tactics by instituting either suit or writ petitions or other proceedings one after the other. As seen from the correspondence exchanged, it is clear that the petitioner''s father, the petitioner and his brother have been approaching the respondent bank by offering to settle the dues by making one time payment from time to time and avoiding to pay the same when the Bank agreed to receive a particular sum and thereafter went back from their offer.

18. That apart, the conduct of the borrower in the present case as has been rightly pointed out by the respondent bank would show that the petitioner''s case will fall under the category of "willful default, fraud and malfeasance". As detailed by the respondent, for the past six years and odd the petitioner, his father and brother have been proposing settlement, but they were never bona fide, nor they were serious, but they always determined to delay the recovery proceedings. As rightly contended by the respondent fraud, willful default and malfeasance has been established when the securities furnished to the Bank namely undivided shares of substantial value has been alienated to third parties while representing that the secured property is free from encumbrance. It was represented in the suit proceedings that there was no fraud or malfeasance, but, demonstrably, the respondent has established that the affidavit filed by the defaulter is false, in that, amount has been realised from the third party-purchasers by sale of undivided shares while in the affidavit it has been stated that substantial sum is due from third parties in respect of the hypothecs. Therefore the scheme will not cover the case of the petitioner who is guilty of fraud, willful default and malfeasance. That apart, the amount offered by the petitioner is nowhere near the amount required or prescribed as per the standard formula for settlement under the Scheme.

19. For the above reasons, this court is of the considered view that the respondent cannot be compelled to accept the petitioner''s offer or to settle the petitioner''s due in terms of the RBI Guidelines. The rights, if any, the petitioner has lost not only by filing a belated application, but also being a willful defaulter who is guilty of fraud and malfeasance and trying to defeat the claims of the respondent Bank by alienating the hypothec. When the application filed by the petitioner is pending before the DRT, the petitioner has approached this court and wanted this court to adjudicate the present claim in this writ petition as well. The various findings recorded in the application for injunction on the original side of this court speaks the conduct of the petitioner in volume.

20. In the light of the above discussion, this court holds that all the points are answered against the petitioner and in favour of the respondent. The contention that the respondent cannot give a new reason in the counter is unsustainable since the relief sought for is not only a writ of certiorari, but also mandamus. Further, there is no duty or obligation on the part of the respondent-Bank to receive the payment offered by the petitioner belatedly to settle the dues. The petitioner is not entitled to claim benefits as per the guidelines of the RBI also.

21. In the result, the writ petition fails and it is dismissed. No costs. Consequently, connected WPMP is also dismissed.

