(2003) 07 BOM CK 0133

In the Bombay High Court

Case No : Writ Petition No. 973 of 2003

Chemosyn Ltd. APPELLANT

Vs

Union Bank of India RESPONDENT

Date of Decision : 03-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 1 BC 77 : (2005) 127 CompCas 398

Hon'ble Judges : Lodha, J;Aguiar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Lodha, J.—Heard.

2. The petitioners by means of this Writ Petition pray for issuance of writ of mandamus or order in that nature directing the respondent No. 1 viz. Union Bank of India to dispose of the petitioner''s application dated 5th March, 2003 as per the circular dated 29th January, 2003 issued by the respondent No. 2 viz. Reserve Bank of India.

3. It is not in dispute that in the application made by the first respondent Bank in the month of October, 2000 before the DRT Mumbai against the petitioners and two others for recovery of amount of Rs. 4,06,00,549.92 with interest at the rate of 16.75% per annum ultimately consent decree was passed on 29th December, 2002. As per the consent terms, decree was passed on admission in terms of prayers (a)(i) to (a)(iii), (b), (c) and (d) of the application. On 29th January, 2003, the guidelines came to be issued by Reserve Bank of India providing for one time settlement of chronic non-performing assets with outstanding balance of Rs. 10 crores and below on the cut-off date. The petitioners seek benefits of the said guidelines. Notice to show cause was issued to the respondents. The Reserve Bank of India in its reply have categorically and in unambiguous and specific terms stated that the revised guidelines for settlement of chronic non-

performing assets of Public Sector Banks, dated 29th January, 2003 docs not apply to the matters where decrees have been passed already. In para 6 of the reply affidavit, the Reserve Bank of India has averred thus.

"6. I submit that this Hon''ble Court had in its order dated 11th June, 2003 directed the Reserve Bank of India to clarify its stand and clarify whether these guidelines also apply to past consent decree cases. The guidelines, which are annexed as Exhibit 8 to the petition state that the guidelines will also cover cases pending before Courts/DRTs/BIFR, subject to consent decree being obtained, RBI guidelines is to provide a fast track channel of recovery of NPAs. Whereas in the case of decreed debts, the Banks can straightaway execute the same and recover their dues. In the case of decreed debts the question of compromise/settlement docs not arise."

4. A perusal of the circular dated 29.1.2003, in our opinion, also leads to that conclusion.

5. Mr. Thakkar, learned Senior Counsel appearing for the petitioners with reference to para 8 of the affidavit in rejoinder dated 27.6.2003 submitted that with regard to the earlier circular dated 27th July, 2000 which was identical to the circular in question dated 29th January, 2003, the clarification was given by the Reserve Bank of India that the benefit of the circular dated 27th July, 2000 could be availed of by the borrower if the revised scheme is beneficial to the borrower and he opts for the same even where decree has been passed and the concerned Bank would take decision on a case to case basis and, therefore, as regards the circular in question dated 29th January, 2003 also, it must be held that if the said scheme is beneficial to the borrower, it must be left to him to opt the said scheme despite consent decree having been passed and the respective sanctioning authorities should take decision accordingly.

6. We are unable to accept the submission of the learned Senior Counsel. Any clarification given by Reserve Bank of India with regard to the circular dated 27th July, 2000 can hardly have any application to the circular dated 29th January, 2003 in consideration before us. As regards the circular dated 29th January, 2003, the Reserve Bank of India has made categorical and unambiguous statement before us in the affidavit that the said circular is not applicable nor docs it cover the cases which have already been decided. According to Reserve Bank of India the objectives of the circular dated 29th January, 2003 was to provide a fast track channel for recovery of NPAs. In the case where decree has already been passed, the Banks can straightaway execute the same and recover the dues and therefore, the said circular dated 29th January, 2003 does not cover the cases where decrees have already been passed.

7. In the circumstances, no case for invocation of writ jurisdiction is made out. Writ Petition is dismissed in limine.

