
(2005) 11 DEL CK 0094
In the Delhi High Court
Case No : WP (C) 10005 of 2005

D.K. Gupta and Another

APPELLANT

Vs

Oriental Bank of Commerce

RESPONDENT

Date of Decision : 29-11-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 2 BC 140 : (2006) 127 DLT 488 : (2006) 3 RCR(Civil) 391

Hon'ble Judges : Markandeya Katju, C.J.; Madan B. Lokur, J

Bench : Division Bench

Advocate : Mala Goel, for the Appellant; Saran Suri, for the Respondent

Final Decision : Dismissed

Judgement

Markandeya Katju, C.J.—This writ petition has been filed with a prayer for a mandamus directing the respondent Oriental Bank of Commerce, to permit the petitioner to avail and settle the account "Indo Pacific Trade Corporation" under the one time settlement scheme for public sector banks issued by the Reserve Bank of India on 21.09.2003. The petitioner also prayed for a direction that the respondent bank be directed not to initiate legal proceedings against it before the Debt Recovery Tribunal.

2. The petitioner No. 1 is a partner of petitioner No. 2, which is a registered partnership firm consisting of petitioner No. 1 and one Lovleen Singhal.

3. It appears that the petitioner No. 2 had taken a loan from the respondent bank, but had not repaid the same. Petitioner No. 2 had availed loan facility in two branches of the respondent bank, i.e., at Panchkuiya Raod and Daryaganj, New Delhi. A Settlement was arrived at between the respondent bank and the petitioners in respect of both the branches on 25.05.2000 vide Annexure P-3 of the Writ Petition. Under this settlement, the bank agreed to accept a sum of Rs. 143.21 lacs instead of Rs. 161.61 lacs due and payable by the petitioners on 01.12.1999. Thereafter further extension was granted by the respondent bank

for payment vide bank letters which are at pages 30-45-B of the Writ Petition. Despite these letters, the petitioners did not deposit the amounts as agreed to be paid under the settlement dated 25.05.2000.

4. The agreement between petitioners and the respondent bank dated 25.05.2000 stated that the petitioners had to pay Rs. 143.21 lacs to the respondent bank in the following manner:-

(1) Rs. 10 lacs in lump sum within 3-4 days.

(2) Balance Rs. 133.21 lacs plus interest at PLR plus interest tax on settlement amount as above in monthly installment without committing more than 2 defaults in the entire repayment period as under:-

a) Rs. 30 lacs in 6 installments of Rs. 5 lacs each commencing from May 2000.

b) Rs. 45 lacs in 6 installments of Rs. 7.5 lacs each commencing from November 2000.

Balance Rs. 58.21 lacs plus interest tax PLR in 12 equal monthly installments commencing from May 2001.

5. Under the settlement dated 25.5.2000 it was agreed that if there was any failure to pay the settlement amount with interest, the respondent bank was at liberty to withdraw all concessions and proceed to recover the entire bank dues which at the time when settlement arrived at on 25.5.2000 amounted to Rs. 161.61 lacs.

6. By means of this petition, the petitioner stated that he should be allowed another one time settlement (OTS) under the scheme of the Reserve Bank of India (known as the Revised guidelines for compromise settlement of chronic non-performing assets of public sector banks) issued on 29.01.2003 which has been extended from 05.02.2004 to 27.07.2004. A true copy of the RBI Scheme dated 29-01-2003 as Annexure P-1.

7. The petitioner stated that its business is closed and it is facing financial crises as the respondent bank is not permitting it to avail the opportunity given to it by the RBI. It is alleged that the banks have to follow all the RBI guidelines without discrimination.

8. There was some correspondence between the parties as is evident from paragraph 12-A to paragraph 32 of the Writ petition. The petitioner alleged that it was having financial constraints and claimed benefit of the RBI scheme of 2003. However, the respondent bank vide letter dated 21.03.2001 wrote to the petitioner that under the RBI guidelines only those accounts which were doubtful as on 21.03.1997 were eligible under the scheme. Hence the account of the petitioner is not covered, as it does not fall within the ambit of the RBI policy 2003 vide Annexure P-8. The bank vide letter dated 18.03.2002 stated that as per the settlement proposal approved by the bank in 2000 the petitioner was to deposit Rs. 5 lacs per month. It was observed that from September 2001

onwards the petitioner deposited only Rs. 2 lacs on 28.08.2002 while their over due as on that date was Rs. 33 lacs. The respondent bank requested the petitioner to deposit the above amount failing which the settlement already approved will be cancelled, and the respondent bank will proceed to recover its full dues. The petitioner informed the respondent bank that it is not in a position to deposit the full amount to the bank vide Annexure P1.

9. It is not necessary to refer to the other correspondence and development referred to in the Writ Petition from paragraph 12 to paragraph 32. Suffice it to say that the petitioner was not willing to pay, or was unable to pay, its dues and wanted the benefit of One Time Settlement under the RBI scheme dated 29.01.2003. The stand of the respondent bank was that despite having entered into a settlement on 25.05.2000 with the bank to pay Rs. 143.21 lacs the petitioner had not made payments in accordance with the settlement and hence the bank was at liberty to withdraw all concession and proceed to recover the entire bank dues. The stand of the bank was that since the petitioner had entered into a settlement with the bank on 25.5.2000 it was not entitled to further concessions under the RBI scheme of 2003.

10. We are in agreement with this contention of the bank that having once entered into settlement with the bank on 25.05.2000 the petitioner is not entitled to the benefit of the RBI Scheme 2003. Also there is no equity in favor of the petitioner which entitles it to the discretionary remedy under Article 226 of the Constitution, since it has not abided by the settlement dated 25.05.2000. It is evident from the facts of the case as stated in the counter affidavit that the petitioner has been repeatedly accommodated by the respondent bank but it had repeatedly defaulted in making the payment as per the schedule in the settlement dated 25.5.2000 and even as per further concessions by the respondent bank. In fact, even after giving concession in the agreement dated 25.5.2000 the bank gave further time to the petitioner to deposit the installments but the petitioner failed to do so.

11. In paragraph 11-12 of the counter affidavit, it is stated that having succeeded in gaining substantial concessions from the respondent bank in respect of the loan in question, the petitioner started corresponding with the respondent bank for claiming benefits as per the RBI scheme 2003, although they were well aware that they are not entitled for the same. Hence the petitioner's actions are malafide and mischievous. Despite being afforded several opportunities the petitioner did not honour the term of its settlement with the respondent bank dated 25.05.2005 and instead offered to settle its dues under the RBI scheme 2003. In our opinion the petitioner was not entitled to the concessions under the said scheme.

12. On the facts of the case, we find no merit in this petition.

13. The petitioner has all along been unwilling to pay its debts and with malafide intention has been making correspondence with the respondent bank although it

had reached a settlement with the respondent bank on 25.05.2000. It has sought benefit of the RBI scheme 2003 which came 3 years later. In our opinion the petitioner is not entitled to the benefit under the said RBI Scheme of 2003, since on accepting the settlement on 25.05.2000 of Rs. 143.21 lacs, it has become a willful defaulter, as it has not paid its dues under the settlement. The 2003 scheme itself states that it does not apply to willful defaulters. It is evident from the fact that soon after settlement with the respondent bank on 25.05.2000, the petitioner wrote a letter to the respondent bank dated 27.11.2000 for further concession and another letter on 20.03.2001 which shows that the petitioner is a willful defaulter. The bank gave notice to the petitioner on 18.03.2002 asking it to pay the due amount of Rs. 33 lacs immediately, failing which the settlement already approved will be cancelled. However, the petitioner failed to make the payments which were due, and instead, wrote time and again to the bank vide letters dated 04.06.2002, 16.08.2002 and 13.08.2002 for further concessions. Thus it is clearly a willful defaulter. The respondent bank had given further concessions following the petitioners' representation as is evident from the bank letter dated 17.12.2002 which allowed extension of the repayment period under the settlement. A perusal of this letter dated 17.12.2002 shows that further extension of 18 months to repay the balance amount with interest was granted and some further concession mentioned in the letter was also granted. Thus the respondent bank was over lenient and granted concession to the petitioner even beyond the settlement dated 25.05.2000. Despite the said accommodation, the petitioner did not pay its dues, and instead wrote a letter to the respondent bank dated 05.06.2004 to settle the amount again under the RBI scheme 2003.

14. As stated in the counter affidavit, the RBI scheme 2003 was not applicable in the petitioners' case as the petitioner's case was already settled under the settlement dated 25.05.2000 and he is a willful defaulter. We agree with the submission made by the learned counsel for the respondent bank that having availed of the settlement, a party cannot be allowed further settlement. Such a party is a willful defaulter and cannot be allowed to take advantage of its own wrongs. The RBI scheme 2003 came much after the first settlement on 25.05.2000 and would not apply to the case of the petitioner as he is a willful defaulter.

15. There are well settled imitations in writ jurisdiction. A writ cannot be issued against a bank to accept an amount which is less than its dues. A writ can only lie if there is a violation of law, and no such violation of law has been shown in this case. Writ jurisdiction is equity jurisdiction and is discretionary vide *Chandra Singh Vs. State of Rajasthan and Another*, .

16. This is not a fit case for the exercise of our discretion under Article 226 of the Constitution of India. In this connection we may mention that recovery of tens of thousands of crores of rupees of bank loans are pending in our country and this is causing an adverse effect on the economy. Unless loans are recovered fresh

loans to the needy businessmen cannot be granted and this is holding up the industrialization of the nation. There must be fiscal discipline in such matters and it is not proper for this court to interfere with such recoveries, particularly, since the matter is entirely contractual.

17. In *Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another*, the Supreme Court observed:-

"The corporation as an instrumentality of the state deals with public money. There can be no doubt that the approach has to be public oriented. It can operate effectively if there is regular realization of the Installments. While the corporation is expected to act fairly in the matter of disbursement of the loans, there is corresponding duty cast upon the borrowers to repay the installments in time, unless prevented by insurmountable difficulties. Regular payment is the rule and non-payment due to extenuating circumstances is the exception. If the repayments are not received as the scheduled time frame, it will disturb the equilibrium of the financial arrangements of the corporations. They do not have at their disposal unlimited funds. They have to cater to the needs of the intended borrowers with the available finance. Non-payment of the installment by a defaulter may stand on the way of a deserving borrower getting financial assistance.

As was observed by this court in *Gem Cap's case* (supra), the legislative intent in enacting the statute in question was to promote industrialization of the states by encouraging small and medium industries by giving financial assistance in the shape of loans and advances, repayable within a stipulated period. Though the corporation is not like an ordinary moneylender or a bank which lends money, there is purpose in its lending, i.e., to promote small and medium industries. The relationship between the corporation and the borrower is that of creditor and debtor. That basic feature cannot be lost sight of. A corporation is not supposed to give loan and then to write it off as a bad debt and ultimately to get out of business. As noted above, it has to recover the amounts due so that fresh loans can be given. In that way industrialization which is given. In that way industrialization which is the intended object can be promoted. It certainly is not and cannot be called upon to pump in more money to revive and resurrect each and every sick industrial unit irrespective of the cost involved. That would be throwing good money after bad money."

18. In our opinion the court should observe judicial restraint in matters relating to loan recoveries and it should not embarrass financial institutions or banks which granted loans by over activism. Stay of such recoveries has an adverse effect on the economy. When a loan is recovered, it is advanced to set up new industrial units, but if it is not recovered, new industrial units cannot be set up. Thus non-recovery holds up the industrialization of our nation, which is a top priority for our nation. Moreover, it is well known that in our country many unscrupulous businessmen borrow money from banks or financial institutions and divert it to secret accounts, and declare their unit sick. In this way scarce

financial resources of the country are siphoned off. This court cannot approve of such malpractices.

19. In our opinion, no one has a legal right to get rehabilitation. When a person has taken a loan he has to repay the same in accordance with the loan schedule as per the agreement between the parties. Rescheduling of the loan is in the sole discretion of the bank or the financial institution which granted the loan and the court cannot compel it to reschedule the loan. The matter regarding loan from financial corporations/banks is purely contractual and a party has to abide by the agreement which he has entered into.

20. A writ of Mandamus can only be issued when there is a legal right with a party asking for the writ to compel the performance of some statutory duty. The petitioners have not been able to show that there is any statute or rule having the force of law which casts a duty on the respondent bank to accept the offer made by the petitioners to settle the dues. In fact, the matter is purely contractual. A Division Bench of the Allahabad High Court in *M.M. Accessories v. UPFC* 2002 (46) ALR 261 has discussed several Supreme Court decisions on the scope of a Writ of Mandamus, and has dismissed the writ petition praying for one time settlement of the loan, observing that no legal duty is cast on the respondents to grant the prayer. The ratio of the decision applies to this case with even greater force, because there has already been a settlement between the petitioner and the bank on 25.05.2000. It is not for this court under Article 226 of the Constitution to keep on directing further settlements.

21. *I Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc.*, the Supreme Court quoted from the Narasimham Committee Report which stated:-

"Banks and financial institutions at present face considerable difficulties in recovery of dues from the clients and enforcement of security charged to them due to delay in the legal processes. A significant portion of the funds of banks and financial institutions is thus blocked in unproductive assets, the values of which keep deteriorating with the passage of time. Banks also incur substantial amounts of expenditure by way of legal charges which add to their overheads."

22. In paragraph 34 of the same judgment the Supreme Court observed:-

"It is also a fact that a large sum of amount remains unrecovered. Normal process of recovery of debts through courts is lengthy and time consuming and is not suited for recovery of such dues. For financial assistance rendered to the industries by the financial institutions, financial liquidity is essential failing which there is a blockade of large sums of amounts creating circumstances which retard the economic progress followed by a large number of other consequent ill effect."

23. In this case there is no equity in the petitioners' favor and hence we are not inclined to exercise our discretion under Article 226 of the Constitution in this case.

24. We have been informed that about Rs. 1,34,000/- crores of loans of banks and financial institutions are outstanding in India and have not been repaid. Unless repayment of the loans is done, the bank or the financial institution cannot lend money to new businessmen and new industrial units cannot be set up. Thus, interfering with such recoveries does incalculable harm to the economy and will be continued to be done if persisted by the courts because new businessmen cannot get loans if the borrowers have not repaid.

25. The petition is accordingly dismissed.