(2011) 05 DEL CK 0135

In the Delhi High Court

Case No : Writ Petition (C) 8520 of 2010

DLF Limited APPELLANT

Vs

Punjab National Bank RESPONDENT

Date of Decision : 27-05-2011

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Contract Act, 1872 — Section 130, 74
Evidence Act, 1872 — Section 91, 92
Limitation Act, 1963 — Article 19
Transfer of Property Act, 1882 — Section 60

Citation : (2011) 180 DLT 435 : (2011) 8 RCR(Civil) 1645

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Arvind Nigam, Pravin Bahadur, Amit Agarwal, Kishan Rawat and Rajan Narain, for the Appellant; Dhruv Mehta and Jagdeep Kishore and Yashraj Singh, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—The petition impugns the demand by the Respondent Bank of "pre-payment charges" without there being a provision therefore in the Loan Agreement. Notice of the petition was issued and vide interim order dated 21st December, 2010, the Respondent Bank was restrained from downgrading the loan account of the Petitioner and/or reporting the default alleged of the Petitioner in payment of pre-payment charges to the Credit Information Bureau (India) Limited (CIBIL) or to the Reserve Bank of India (RBI). The Petitioner thereafter applied for release of the security deposited with the Respondent Bank averring that while the security was furnished to secure the loan of Rs. 1,000 crores which stands pre-paid and the demand now remaining and impugned is only of pre-payment charges of Rs. 20 crores only. Certain proposals for amicable interim arrangement to the said effect were discussed between the parties but without any success. During the course thereof, on suggestion of the senior counsels for the parties, arguments on the writ petition itself were heard.

2. The challenge by the Petitioner is on the grounds:

(i). that even though the entire loan amount together with interest due thereon had been remitted by the Petitioner and received by the Respondent Bank, the Respondent Bank was illegally withholding the security of the Petitioner of over Rs. 1,000 crores for the reason of alleged default in payment of pre-payment charges of Rs. 20 crores @ 2% of the loan amount of Rs. 1,000 crores;

(ii) the Respondent Bank in the loan subject matter of the present petition did not disclose any such pre-payment charges and is thus not entitled to claim the same. The said argument is buttressed from the fact that another Loan Agreement executed between the Petitioner and the Respondent Bank shortly after the Loan Agreement subject matter of this petition prescribed pre-payment charges of 1%;

(iii) it is contended that the claim of the Respondent Bank for pre-payment charges without there being a provision therefore in the agreement is violative of the RBI guidelines;

(iv) that the RBI guidelines dated 25th November, 2008 and 12th November, 2010 mandate the Banks to upfront disclose to the borrower all the information in relation to the loan including information regarding pre-payment options and charges;

(v) it is contended that the claim for pre-payment charges is also violative of the Fair Practices Code notified by the Respondent Bank itself requiring pre-payment charges to be notified at the stage of application for processing of loan itself;

(vi) that since pre-payment was out of internal accruals of the Petitioner, the levy of pre-payment penalty was unjustified.

(vii) that the Petitioner had notified the Respondent Bank that it was utilizing its own internal funds for pre-paying the loan;

(viii) the maintainability of the writ is sought to be justified by relying upon Sardar Associates and Others Vs. Punjab and Sind Bank and Others, laying down that if in terms of the guidelines issued by the RBI, a right is created in a borrower, writ of mandamus could be issued;

(ix) that the action of the Respondent Bank was thus illegal and arbitrary;

3. The Respondent Bank in its counter affidavit has pleaded:

(a) that the writ petition raises disputed questions of fact which cannot be decided in exercise of writ jurisdiction;

(b) that the issue whether there is any agreement between the parties as to pre-payment charges or not needs examination of detailed facts, including leading of oral evidence as to the nature of transaction and all of which is not permissible in writ jurisdiction;

(c) that the occasion for mentioning the pre-payment charges in the Loan Agreement did not arise owing to the Petitioner having not expressed any intention to pre-pay the loan ahead of the time frame fixed in the agreement; that since the Petitioner with respect to the subsequent loan had wanted an option for pre-payment, charges therefore were specified;

(d) that the Petitioner had effected pre-payment of the loan inspite of being intimated of the pre-payment charges and the Director of the Petitioner had also assured the CMD of the Respondent Bank that the matter regarding pre-payment charges would be settled (however neither is the name of the Director of the Petitioner who had meted out the said assurance disclosed nor has any counter affidavit of CMD of the Respondent Bank to whom assurance is stated to have been meted out been filed).

(e) that no RBI guidelines had been violated in levying pre-payment charges on the Petitioner;

(f) that RBI vide its letter dated 16th May, 2006 has advised all commercial Banks to display service charges relating to certain services, as per the annexure to the said letter and which included pre-payment charges; that in compliance with the said guidelines, the Respondent Bank had displayed its policy of levy of pre-payment charges @ 2% of the amount outstanding, at its website, for notice to the general public;

(g) that the RBI guidelines and Fair Practices Code relied upon by the Petitioner stood complied, by the Respondent Bank on its website notifying its policy of levy of pre-payment charges (it may however be noticed that though the said plea has been taken but no download from the website has been produced, neither as annexure to the counter affidavit nor during the hearing);

(h) that the pre-payment option and charge thereupon are universal in the Banking industry in India and the Petitioner being a substantial borrower from the Banking industry, is aware of the same;

(i) that the Bank, engaged in the business of lending money has to arrange for funds from different sources at different rates of interest and which are so arranged depending upon the requirement of funds by the borrowers and the period for which the said funds are to be utilized by the borrower;

(j) that in a competitive market which is volatile with interest rates varying from time to time, any pre-payment saddles the Bank with large amount of un-utilized funds and which has led to the practice of levy of pre-payment charges;

4. The senior counsel for the Petitioner in addition to the arguments already noticed above has contended that the terms of the Loan Agreement between the parties having been reduced to writing, no other evidence can be looked at under Sections 91 & 92 of the Indian Evidence Act, 1872 and thus the only question

involved is of the interpretation of the Loan Agreement and the RBI guidelines and Fair Practices Code aforesaid and no disputed question of fact requiring any further evidence can be said to be arising in the matter. Reliance is placed on ABL International Ltd. and Another Vs. Export Credit Guarantee Corporation of India Ltd. and Others, laying down that in appropriate cases the writ court has jurisdiction to entertain a writ petition involving disputed questions of fact and that where disputed questions of fact pertaining to the interpretation/meaning of documents are involved the Courts can very well go into the same and decide the objections if the facts so permit; it was further held that merely because one of the parties wants to dispute the meaning of a document, would not make it a disputed fact.

5. The senior counsel for the Respondent Bank per contra has by drawing attention to the prayer paragraph of the writ petition contended that the writ petition seeking to restrain the Respondent Bank from downgrading the account of the Petitioner or reporting the Petitioner as a defaulter, without the Respondent Bank doing so is premature; it is urged that before effecting the same, as per the prescribed rules, hearing has to be given to the defaulter. Reliance is placed on Ulagappa v. Divisional Commissioner, Mysore (2001) 10 SCC 639 where writ petition against a mere proposal was held to be premature and it was held that right to sue / challenge would accrue only on issuance of Notification including an area within the Panchayat limits.

6. No merit is however found in the said argument. The main relief claimed in the writ petition is of quashing of the demand for pre-payment charges and the relief of restraining the Respondent Bank from so downgrading the account of the Petitioner or from reporting the Petitioner as a defaulter is a mere consequential relief. Moreover, the Respondent Bank in the present case, vide its letter dated 7th December, 2010 threatened the Petitioner with downgrading and with reporting to CIBIL and did not call the Petitioner for any hearing, for the petition to be said to be premature.

7. The senior counsel for the Respondent Bank then has contended that the writ remedy is not available for breach of a contract as the present case is. On enquiry as to how breach of contract is claimed, he invites attention to Clause 2 and also to Schedule - II of the subject Loan Agreement and which are as under:

The Borrower shall repay the said medium term loan in six monthly installments after a moratorium of 30 months from the date of disbursement as per the Schedule II hereto.

SCHEDULE - II

(SCHEDULE OF REPAYMENT)

The term loan shall be repayable in six monthly installments after a moratorium of 30 months from the date of disbursement, as hereunder:

1. Five monthly installments of Rs. 150 crores each

2. Sixth installment of Rs. 250 crore

Interest to be paid as and when levied in the account.

8. It is contended that once the parties had agreed that the loan could be re-paid by the Petitioner to the Respondent Bank only after 30 months from the date of disbursement, before the expiry of the said 30 months, neither could the Respondent Bank demand repayment of the loan nor was the Petitioner liable to repay the same. It is contended that there is no right of pre-payment. Reliance is placed on paras 10 & 11 of Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, laying down that the interpretation and implementation of a clause in a contract cannot be the subject matter of a writ petition and if a term of a contract is violated, ordinarily the remedy is not the writ jurisdiction under Article 226 of the Constitution of India. Reliance is also placed on State of U.P. and others Vs. Bridge and Roof Co. (India) Ltd., laying down that whether any amount is due under the contract and if so, how much and whether retention or refusal of the Government to pay any amount is justified or not, are all matters which cannot be agitated in or adjudicated upon in a writ jurisdiction. It is further urged that the RBI guidelines dated 12th November, 2010 only oblige the Banks to disclose the pre-payment option and in the present case owing to the clauses aforesaid in the Loan Agreement, the parties had negated the pre-payment option. It is also urged on the basis of the contemporaneous correspondence that the Petitioner had then not controverted the right of the Respondent Bank to claim pre-payment charges and had in fact in letter dated 6th August, 2010 sought waiver thereof and which was declined vide letter dated 20th August, 2010 of the Respondent Bank. It is thus contended that the Petitioner having accepted the right of the Respondent Bank to levy pre-payment charges and having sought waiver thereof, cannot now be heard to dispute the same. It is urged that the judgment in Sardar Associates (supra) does not apply to the present case in as much as there is no violation of any guidelines. Reliance is also placed on Binny Ltd. and Another Vs. V. Sadasivan and Others, to contend that without an element of public law in the action taken by the Body against whom the writ jurisdiction is invoked, the remedy of judicial review is not available. Upon it being enquired from the senior counsel for the Respondent Bank whether a borrower has no inherent right to relieve himself of the burden of the debt and to pre-pay the same, reference was made to Sita Ram Gupta Vs. Punjab National Bank and Others, to contend that even if the Petitioner can be said to have any inherent right to pre-pay, the Petitioner had waived the same by agreeing in the Loan Agreement for re-payment of loan to commence after 30 months. In this regard it may also be noticed that though the Respondent Bank in its counter affidavit as well as during the arguments has referred to a judgment of the Competition Commission in Neeraj Malhotra v. Deustche Post Bank Home Finance Ltd. upholding the validity of pre-payment charges but inspite of asking, chose not to supply a copy of the said judgment.

9. The senior counsel for the Petitioner in rejoinder has contended that the Respondent Bank having accepted the pre-payment tendered to it was not entitled to thereafter debit pre-payment charges to the Petitioner; it is contended that the Respondent Bank ought not to have accepted the pre-payment or ought to have returned the amount received if so not willing for the same and having accepted the same cannot thereafter levy pre-payment charges. It is also urged that in the Loan Agreement there is no prohibition against pre-payment. The judgment in Bridge & Roof Co. (India) Ltd. (supra) is sought to be distinguished by contending that the view taken therein was for the reason of existence of an arbitration clause and which is not the case here. Similarly, with respect to Kerala State Electricity Board (supra) it is contended that the Supreme Court ultimately upheld the High Court judgment entertaining the writ petition. The judgment in Sita Ram Gupta (supra) is sought to be distinguished by reference to para 7 thereof and contending that in that case the Court, in view of express Clause in the agreement of the guarantee being a continuing one, held the same to be in waiver of Section 130 of the Contract Act.

10. I had during the course of hearing raised the question of the very validity of pre-payment charges especially in the Indian context and if not in relation to the corporate loans as in the present case, at least in relation to personal loans. Debts/borrowing have always been recognized in India as onerous and not merely as commercial transaction but also as moral obligation; to remain under debt and/or to not pay the debt has always been understood not merely as a legal/contractual default but also as moral turpitude. Till as recently as in 2006, the law recognized the ancient principle of pious obligation of a son to discharge debts of his father. The question which arises is whether a person can be compelled to remain a borrower or under a debt. The answer to me appears to be No. I find the Three Judge Bench of Supreme Court also in N. Subramania Iyer Vs. The Official Receiver, Quilon, to have expressed a view that an honest borrower/debtor should be released from his multifarious obligations at the earliest. The senior counsels for the parties however fairly stated that the question of validity of pre-payment charges had not been agitated in any Court except before the Competition Commission in Neeraj Malhotra (supra) aforesaid and where the same has been upheld. The legal question though interesting is not taken up in this writ petition in as much as the same was raised by the Court of its own initiative and since the counsels were not given full opportunity to address thereon.

11. My curiosity however took me to the judgment of the Competition Commission in (2011) 102 CLA 181 I find that the notice of those proceedings was given to all the banks including to Punjab National Bank the Respondent herein. The majority judgment of the Competition Commission in para 13.13 (xi) notices the contention of the Punjab National Bank and many other banks that they do not levy pre-payment penalty in case of "structural pre-payments" that is to say the pre-payment out of one''s own funds and only "cyclical pre-payments" i.e. pre-payment on account of re-financing attracts pre-payment

penalty. Of course, the proceedings before the Competition Commission were with respect to home loans and not with respect to loan as is subject matter of this petition. However the said stand of the Respondent Bank itself in the said proceedings brings to relevance the plea aforesaid of the Petitioner, of pre-payment offered being out of its own accruals and not on account of re-finance. Again, no arguments having been addressed at all on this aspect, it is not deemed expedient to make the same a basis of this judgment.

12. I also find two of the members of the Competition Commission in Neeraj Malhotra to have written dissenting opinions. One of the said dissenting members, in his dissenting opinion subsequently also in judgment in 2011 CompLR 324 relying upon various foreign judgments, again held pre-payment charges to be invalid.

13. It is perhaps for the aforesaid two reasons that the Respondent Bank inspite of mentioning, chose not to rely upon the judgment of the Competition Commission.

14. The first question which arises for adjudication in the present case is as to the very maintainability of the writ petition and which in fact is the main defence of the Respondent Bank also. There is no doubt that the Respondent Bank would fall within the definition of "State" within the meaning of Article 12 of the Constitution of India. Reference may be made to the recent dicta in Punjab National Bank v. Astamija Dash (2008) 14 SCC 370. As would be apparent from the record of the pleadings and contentions hereinabove, no disputed questions of fact arise in the present case. The matter has to be decided on the interpretation of the contract alone. The terms of the contract between the parties having been reduced to writing, any other evidence except the said writing in any case is not permitted.

15. The demand of the Respondent Bank impugned in this proceeding is in the course of the Banking activity/business of the Respondent Bank. Such Banking activity/business is under the supervision of the RBI and the Respondent Bank, in the course of carrying on the Banking business even though by entering into contract with its clients, is guided by the guidelines of the RBI. The Banking Regulation Act, 1949 has been enacted owing to the business of Banking having an element of public policy in it and not being a matter of contract alone. In my opinion if any action of the Respondent Bank is shown to be in violation of guidelines of the RBI, the remedy of a writ would certainly lie and the Bank cannot oust the jurisdiction of the writ Court by merely pleading the dispute to be arising out of contractual transaction. The same forms the foundation stone of the judgment in Sardar Associates.

16. The question to be thus seen is whether the challenge by the Petitioner to the demand can be said to be in violation of the guidelines of the RBI and the Fair Practices Code policy adopted by the Respondent Bank in pursuance to the guidelines of RBI.

17. The RBI vide its guidelines dated 25th November, 2008 did provide that loan application forms in respect of all categories of loans should include information about fees/charges, if any, payable inter alia for pre-payment options and any other matter which affects the interest of the borrower, so that a meaningful comparison with the terms and conditions offered by other banks can be made and an informed decision can be taken by the borrower. It also declared that levying such charges subsequently without disclosing the same is an unfair practice. Similarly, the guidelines of 12th November, 2010 reiterated the necessity for disclosure of all charges including of pre-payment options.

18. It thus cannot be said that there is no public law element in the present case. The question involved certainly entails compliance/non-compliance by the Respondent Bank of the RBI guidelines and the writ petition is thus found to be maintainable. In terms of the RBI guidelines, a right is created in the Petitioner as borrower from the Bank and the Petitioner by present petition is found to be resisting a claim of the Bank, which according to the Petitioner is in violation by the Bank of the said guidelines. The Apex Court, in Sardar Associates (supra), held a writ petition to be maintainable in such circumstances.

19. The Respondent Bank has not placed before this Court the loan application form if any, filled up by the Petitioner for the loan aforesaid wherein the Petitioner may have scored out/deleted the pre-payment option. As far as the admitted agreement between the parties is concerned, the same makes no reference whatsoever to pre-payment. The same of course uses the words "after a moratorium of 30 months from the date of disbursement" in relation to repayment of the loan. I have wondered whether, by use of the word "moratorium" it can be said that the Petitioner was prohibited from repaying before 30 months of disbursement of the loan. Black''s Law Dictionary, 6th Edition defines "moratorium" as "a term designating suspension of legal remedy against the debtor" or as "a period of permissive or obligatory delay i.e a period during which an obligator has a legal right to delay meeting an obligation". The Division Bench of the Bombay High Court in Shiv Kumar Tulsian and another Vs. Union of India and others, held that "moratorium" implies postponement of obligations of the debtor to pay his creditor and in the context of a Bank, held moratorium to mean postponement of payment or postponement of legal proceedings for recovery of amount. The word "moratorium" has been defined in the Andhra Pradesh Farmers Agricultural Debts (Moratorium) Act, 2004 also as a legal authorization to a debtor to postpone payment for a certain time.

20. Thus the use of word "moratorium" by the Respondent Bank in the Loan Agreement is only indicative of that, though the Petitioner was obliged to re-pay the debt immediately but the Respondent Bank to whom the Petitioner was obliged, allowed suspension of the said obligation. Thus while the Petitioner remained obliged to re-pay the loan immediately, it was the Respondent Bank which agreed not to enforce the said obligation for the period of 30 months. There is nothing to suggest that the Petitioner as the obligatee was stopped or

barred in any manner from discharging its obligation even prior to the said time. Just because the lender has suspended his right of re-calling the loan would not automatically mean that the borrower has also agreed to suspend his right of immediate re-payment of the loan and if the parties desire so, their agreement is required to provide a specific prohibition on the borrower also. The Agreement in the present case is not found to be containing any such prohibition on the Petitioner as borrower and it is only the Respondent Bank as lender which had agreed to provide moratorium of 30 months for re-payment to the Petitioner. This is also evident from the fact that notwithstanding the said moratorium imposed by the Respondent Bank on itself, the Respondent Bank was entitled to recover the loan amount even prior to the said moratorium in the event of specified defaults of the Petitioner.

21. Thus, from the language of the Loan Agreement and other documents before this Court, it cannot be said that the Respondent Bank had at the time of granting the loan informed the Petitioner that it could not pre-pay the loan before 30 months or that if it so pre-paid the loan it will be liable for charges therefore as are now being claimed and which are impugned in this petition. The action of the Respondent Bank is definitely in violation of the guidelines of RBI and owing thereto it cannot be said that the Petitioner had taken an informed decision qua pre-payment charges; the impugned demand thus also becomes an unfair practice on the part of the Respondent Bank, again in the teeth of RBI guidelines. I have enquired from the senior counsel for the Respondent Bank whether notwithstanding the written Loan Agreement, there was any clause therein also incorporating therein the general terms and conditions stated to be disclosed on the website or making any other general practice averred of the Bank of levying pre-payment charges. None has been shown. The Respondent Bank without such incorporation of the general practices and website terms in the Agreement cannot be permitted to rely on the same. The writ petition would thus be maintainable.

22. Alternatively, even according to the senior counsel for the Respondent Bank, the only effect of the terms of the Loan Agreement reproduced hereinabove, is to render the Petitioner, if repaying the loan before 30 months, in breach of the Loan Agreement. The remedy of the Respondent Bank for such breach also would be to claim compensation therefore from the Petitioner. I had enquired from the senior counsel for the Respondent Bank as to on what basis the Respondent Bank in the absence of any clause in the contract had claimed pre-payment charges @ 2% of the sanctioned loan amount and not less or more. The senior counsel for the Respondent Bank could only refer to the pleading in the counter affidavit of the Notification to the said effect being on the Respondent Bank''s official website. However as aforesaid the same has not been filed. There is no clause also in the Agreement as aforesaid, making the general terms and conditions displayed on the website, a part of the Agreement. Moreover, the Respondent Bank itself in the other Loan Agreement with the Petitioner agreed to pre-payment charges of 1%; it thus cannot be said to be the policy of the

Respondent Bank as to so bind the Petitioner. Not only so, even the said 1% was also to be levied only if the Respondent Bank did not agree to pre-payment, again showing that even under the other agreement levy of pre-payment charges was not automatic or mandatory. Dent is also cast on the said argument by the stand of the Respondent Bank before the Competition Commission as aforesaid. The Respondent Bank before the Competition Commission carved out a distinction between repayment by obtaining refinancing and repayment from self accruals. There is no explanation as to why the same standard is not applied here.

23. It is again not as if pre-payment is a taboo. According to the Respondent Bank also, pre-payment is possible on payment of charges/penalty therefore. The parties in the present case chose not to provide for the compensation/ penalty payable for breach on account of pre-payment. Even if such compensation/penalty is stipulated in the Loan Agreement, the same u/s 74 of the Indian Contract Act r/w the dicta of the Constitution Bench in Fateh Chand Vs. Balkishan Das, is only the maximum extent of penalty/compensation payable for such breach. The Respondent Bank would still be liable to prove before the appropriate fora the loss suffered by it by such breach and would be entitled to only such compensation to the extent of loss shown. Unless such compensation is determined, the Respondent Bank could not have and has not disclosed any right, to unilaterally debit the account of the Petitioner or to threaten the Petitioner with downgrading of its account or with reporting it as a default to the agency concerned. The entire loan amount having already been received by the Respondent Bank, the Respondent Bank is not entitled to withhold valuable security furnished for re-payment especially when the amount claimed by it is a miniscule i.e. 2% only of the loan amount for which security was taken.

24. In my opinion every borrower has an inherent right to free himself from the loan. Similarly, every lender has a right in law to re-call the loan at any time unless he has agreed to suspend that right for a limited period and in which case he is barred from re-calling the loan for that period. It is for this reason only that Article 19 of the Schedule to the Limitation Act, 1963 provides the period of limitation for recovery of money lent as three years commencing from the date when the loan is made.

25. In this regard, I may notice that prior to the amendment of the year 1929 to Section 60 of the Transfer of Property Act, 1882, the Courts had held that a mortgagor had a right to redeem the mortgage even prior to the time fixed for mortgage. Post the 1929 amendment, the Supreme Court inter alia in Seth Ganga Dhar Vs. Shankar Lal and Others, held that owing to the language of the said Section 60, it was not permissible for a mortgagor to redeem the mortgage before the principal money had become due i.e. before the time fixed of mortgage. In the said Judgment, the time of 85 years of mortgage was held to be not amounting to a clog on the equity of redemption. The present case is however not concerned with redemption of mortgage. The principal amount and

all interest due thereon already stand paid and received; the only question as aforesaid is of pre-payment charges. I may still record that the Supreme Court in Shri Shivdev Singh and Another Vs. Sh. Sucha Singh and Another, inspite of noticing Ganga Dhar (supra) has observed that the doctrine of clog on the equity of redemption has to be moulded in modern conditions and in the said case, held the term of mortgage of 99 years to be in the teeth of the statutory, legal and equitable right redemption and a clog on the equity of redemption and thus void. There thus appears to be a shift from what was laid down in Ganga Dhar and towards what was the interpretation prior to the amendment of the year 1929.

26. It would thus be seen that there are no disputed questions of fact requiring trial or otherwise a need to relegate the parties to the suit. It may also be mentioned that in the present case it is not the Petitioner who is seeking implementation of the contract as was the case in Kerala State Electricity Board. The Petitioner is rather impugning the action of the Respondent and which action of the Respondent Bank in the discussion aforesaid has been found to have no basis, neither under the contract between the parties nor under the law and is rather found to be in violation of the RBI guidelines/instructions binding the conduct and dealings of the Respondent Bank.

27. I am also unable to accept the contention of the Respondent Bank that the Petitioner had accepted the liability for pre-payment charges or in acceptance of the same was seeking waiver thereof. In fact the Petitioner in its letter dated 15th September, 2010 clearly intimated the Respondent Bank that "as per the Loan Agreement no pre-payment penalty is payable" and vide its letter dated 16th September, 2010 also used the expression "without any pre-payment charges" and it was the Respondent Bank only which used the expression "waiver".

28. The Respondent Bank as a "State" has to be a model litigant. It is not expected to take technical pleas encouraging litigation. In the present case, in the facts aforesaid, the attempt of the Respondent Bank in not releasing securities worth Rs. 1000 crores while its claim against the Petitioner is admittedly of Rs. 20 crores only, is found to be nothing but an arm twisting practice adopted by loan sharks to compel the Petitioner to give in to the demand for pre-payment charges. The Banking activity in the country was nationalized to curb such malpractices and the nationalized Banks cannot be permitted to continue behaving as loan sharks. The Supreme Court in The State of Maharashtra Vs. Narayan Vyankatesh Despande, held that State which has public accountability in respect of its actions should not defend all claims and even those which are plainly and manifestly correct, thereby dragging the opposite party in unnecessary litigation. Similarly in State of Maharashtra and others Vs. Admane Anita Moti and others, it was held that State should behave like an enlightened litigant and not like an ordinary person and ought not to defend cases only because the vanity of a particular officer is hurt. To the same effect is State of Orissa Vs. Orient Paper and Industries Ltd., The Supreme Court recently

in Urban Improvement Trust, Bikaner Vs. Mohan Lal, reiterated that statutory authorities ought not to raise frivolous and unjust objections, nor act in a callous and high handed manner and cannot behave like some private litigants. It was further held that such bodies are expected to restitute/restore the wrongs committed, upon being found so without requiring unwarranted litigation for the same. Reference may also be made to Dilbagh Rai Jarry Vs. Union of India (UOI) and Others, & Madras Port Trust Vs. Hymanshu International by its Proprietor V. Venkatadri (Dead) by L.R.s, . Again in Special Land Acquisition Officer Vs. Karigowda and Others, it was reiterated that State as litigant has an obligation to act fairly and for the benefit of public at large and to avoid unnecessary litigation.

29. The petition therefore succeeds and is allowed. The demand of the Respondent Bank on the Petitioner for pre-payment charges of Rs. 20 crores on the loan subject matter of this writ petition is found to be without any basis and is quashed. Resultantly, the Respondent Bank also stands restrained from threatening actions in pursuance to the said demand. The Respondent Bank is also directed to within six weeks of today return to the Petitioner the security placed by the Petitioner with the Respondent Bank for re-payment of the loan and which loan already stands re-paid. Upon default by the Respondent Bank in so releasing the security within the time aforesaid, the Petitioner, besides other remedies shall also be entitled to interest @ 1% per annum on the value of the security. The Petitioner is also awarded costs of Rs. 20,000/- of this petition payable by the Respondent Bank within six weeks aforesaid.

30. Postscript: Though the counsels had as aforesaid stated that the question of validity of pre-payment charges has not been agitated in any Court, but I find the High Courts of Karnataka and Madras in Hotel Vrinda Prakash and Smt. Chitravrinda Shetty Vs. Karnataka State Financial Corporation, and Hatsun Agro Products Ltd. Vs. Industrial Development Bank of India, respectively, to have upheld the pre-payment charges. However in each of the cases the Loan Agreement contained a negative covenant for pre-payment. The question also appears to have been raised in this Court in T.T. Limited v. Industrial Finance Corporation of India Limited 2000 VII AD (Del) 146 and Dynamic Continental Pvt. Ltd. Vs. UCO Bank, but not adjudicated upon.

