
(2022) 10 BOM CK 0073
In the Bombay High Court
Case No : Writ Petition (L) No.24467 Of 2022

Gaurang Ananda Shetty

APPELLANT

Vs

IDBI Bank Limited And Others

RESPONDENT

Date of Decision : 12-10-2022

Acts Referred:

Citation : (2022) 10 BOM CK 0073

Hon'ble Judges : S.V. Gangapurwala, J;R.N. Laddha, J

Bench : Division Bench

Advocate : Nikhil Sakhardande, Shubhra Swami, Rutvi Doshi, SSB Legal, Zarir Bharucha, Rishi Thakur, Dhvani Gala

Final Decision : Disposed Of

Judgement

S.V.Gangapurwala, J

1 The petitioner seeks direction against the respondent no.1 to provide the petitioner with copies of all the documents on the basis of which the show cause notice dated September 02, 2020, was issued, which documents are sought for in the first reply sent by the petitioner between September 18, 2020 and July 06, 2022. The petitioner further seeks directions against respondent no.1 to withdraw the impugned letter dated July 21, 2022 as against the petitioner.

2 Mr.Sakhardande the learned Senior Advocate for the petitioner submits that the respondent no.1 bank has initiated proceedings against the petitioner under the provisions of Master Circular on Wilful Defaulters dated July 01, 2015 by issuing show cause notice dated September 02, 2020. Under letter dated July 21, 2022, the respondent no.1 informed the petitioner that a personal hearing is scheduled to permit the petitioner to defend himself before the Wilful Defaulter Committee. The learned Senior Advocate submits that no information other than incoherent and selective portions of a purported forensic report is made available to him by the Respondent Bank. According to the learned Senior Advocate, the petitioner has disassociated himself with Jet Airways Limited (JAL) since April, 2019 and

has no access to the information or data pertaining to JAL. The learned Senior Advocate submits that the action of the Respondent no.1 Bank to refuse providing all data and documents which the Respondent no.1 Bank has relied upon in issuing show cause notice violates the principle of natural justice.

3 It is further submitted by learned Senior Advocate for the Petitioner that time to time the petitioner has issued letters asking the Bank to furnish him with material data information. Personal hearing offered by the Bank to the petitioner is nothing but an empty formality. It is the right of the petitioner to receive the documents forming the basis of show cause notice and an intended action of the Bank on the basis of Master Circular. In absence of the documents, the Petitioner would not be given full and fair opportunity to defend his case.

4 It is submitted that the show cause notice is devoid of any facts and specifics which can attribute any liability whatsoever to the petitioner, especially in view of the fact that the allegations contained in the show cause notice refer to a broad and undefined period between April, 2011 until June, 2019 and the petitioner was the Director of the JAL only between August, 2012 and April, 2019.

5 The access to 'one portion of a summary of an alleged forensic report' is not sufficient for the petitioner to defend himself fully. The same is incomplete document. The Executive Summary itself specifies that the summary has to be read in conjunction with the detailed report along with the limitations and it cannot be treated as substitute thereof. The summary does not bear any context, nor does it make references to or provide the underlying material in support of the contents of the report.

6 The petitioner had earlier filed Writ Petition but did not challenge the show cause notice, thinking that upon the documents being made available by respondent no.1 and upon considering the responses given by the petitioner, the show cause notice will be discharged. However, considering the conduct of the respondent no.1 not acting in fair and transparent manner, petitioner would be justified in challenging the show cause notice in the present writ petition.

7 The impugned communication is perverse and arbitrary. The directions to the petitioner to appear for personal hearing on July 30, 2022 without providing any material particulars and all documents would be futile, ineffective rendering the whole purpose of the show cause notice and hearing meaningless.

8 The learned counsel for the respondent bank submits that the petitioner has been provided with the extract of 'Executive Summary'. The same is sufficient. Respondent no.1 would rely upon the said extract of the Summary. Copy of which is given to the petitioner. The petitioner has sought for the inspection under its communication dated September 18, 2020. The documents referred to in paragraph 32 of the said letter are not relied by the bank. Opportunity has been given. The petitioner had earlier filed the Writ Petition bearing No.1645 of 2021 challenging the order of the Wilful Defaulter Committee. This court directed the petitioner to move before the Review Committee within one week. Thereafter,

Review Committee remanded the matter to the Wilful Defaulter Committee to give opportunity to the petitioner. Pursuant thereof, petitioner is given opportunity. Petitioner is also given Executive Summary of the forensic report. On or about November 20, 2020, Wilful Defaulter Committee has given ample opportunity to the petitioner to put forth his case. Principles of natural justice are not violated. Provisions of the Master Circular are scrupulously adhered to by the respondents.

9 We have considered the submissions.

10 It appears that the show cause notice has been issued to the petitioner who was the whole time Director of JAL from August 6, 2012 till April 22, 2019. As per the Master Circular on Wilful Defaulters dated July 01, 2015, show cause notice is issued to the petitioner on or about September 02, 2020. The proceedings were carried further. Subsequently, Wilful Defaulter Committee passed an order declaring the petitioner Wilful Defaulter.

11 The petitioner filed Writ Petition No.1645 of 2021 on the ground that without providing any documents, Wilful Defaulter Committee of Respondent no.1 has passed an order against the petitioner on July 08, 2021. It was held that the petitioner is fit to be declared as a Wilful Defaulter. This court recorded the contention of the petitioner that respondent without providing any documents passed the said order. The respondent no.1 raised the ground that the petitioner has alternate efficacious remedy before the Review Committee of Wilful Defaulter. Pursuant to the said submissions, the petitioner withdrew the petition with liberty to file appropriate proceedings before the Review Committee. The Division Bench of this court under order dated August 13, 2021 granted liberty to the petitioner to move before the Review Committee within one week. The Review Committee was thereafter, directed to decide the petitioner's application on its own merits.

12 It appears that after the order is passed by the Division Bench of this court on August 13, 2021 in Writ Petition No.1645 of 2021 the petitioner approached the Review Committee. Review Committee, thereafter, remanded the matter to the Wilful Defaulter Committee giving opportunity to the petitioner to put forth his case. Upon remand, the petitioner sought for documents. Petitioner was provided with the Executive Summary of the forensic audit report. According to the petitioner, entire audit report is required to be provided. It would appear from the aforesaid facts and circumstances that the petitioner had challenged the order of the Wilful Defaulter Committee passed earlier by filing Writ Petition No.1645 of 2021 on similar grounds that the respondent without providing any documents passed the said order. The court did not interfere in the matter and allowed the petitioner to approach the Review Committee. The Review Committee remanded the matter to the Wilful Defaulter Committee giving opportunity to the petitioner. Upon remand the petitioner is provided with the Executive Summary of the forensic audit report. Under letter dated September 18, 2020, petitioner in paragraph 32 of the said letter sought for documents

detailed therein or allow inspection thereof. It is contended by the learned counsel for the respondent no.1 bank that all the documents referred to in paragraph 32 of the letter dated September 18, 2020 by the petitioner are not relied by the respondent no.1 bank before the Wilful Defaulter Committee.

13 It is for the petitioner now to appear and agitate before the Wilful Defaulter Committee. If the order is passed against the petitioner by the Wilful Defaulter Committee, petitioner has remedy before the Review Committee to agitate all these grounds. In light of the above, we are not inclined to entertain the Writ Petition. However, considering the fact that the matter was pending here, we allow the petitioner 10 days time to file reply and appear before the Wilful Defaulter Committee.

14 Wilful Defaulter Committee shall consider the stand taken up by the petitioner and pass appropriate orders. Naturally, if any order is passed against the petitioner, petitioner has remedy before the Review Committee.

15 Writ petition is accordingly disposed of with aforesaid observations and directions.