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**(2020) 02 CAL CK 0001**  
**In the Calcutta High Court**  
**Case No : Writ Petitions. No. 12 Of 2020**

Jai Balaji Industries Ltd. And Another APPELLANT  
Vs  
Punjab National Bank And Another RESPONDENT

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**Date of Decision :** 03-02-2020

**Acts Referred:**

**Citation :** (2020) 02 CAL CK 0001

**Hon'ble Judges :** Sabyasachi Bhattacharyya, J

**Bench :** Single Bench

**Advocate :** Abhrajit Mitra, Rajarshi Kajaria, Joydip Banerjee, Abhishek Banerjee, Parna Roy Chowdhury, Shatanik Ghosh

**Final Decision :** Allowed

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## Judgement

Sabyasachi Bhattacharyya, J

The Court:

1. The present challenge has been preferred primarily against a notice dated December 16, 2019 issued by the respondent no.1-bank to the petitioner no.1 and others.

2. The subject of the said notice reads as follows:

Identification of default in the loan account of M/s Jai Balaji Industries Ltd. with the bank, as "willful defaulter". The notice proceeded to mention certain defaults having been committed by the petitioner no.1 and that siphoning off funds was also indicated from the conduct of the petitioner no.1.

3. The crucial paragraph, at page - 26 of the instant writ petition, stated as follows:

"If the default(s) is/are not rectified within 10 days from the receipt of this notice, bank intends to disclose or publish your name or the name/s of your company/ firm/ unit and your Director/s/Partner/s/Proprietor as wilful defaulter

in such manner and through such medium as the bank or RBI in their absolute discretion may think fit. This will eventually result in:

? Non Sanction of additional facility by any Bank/FI.

? Debarring the entrepreneurs/promoters from institutional finance from SCBs, DFIs, Govt. owned NBFCs, Investment Institutions etc. for floating new ventures.

? Beside legal process, and foreclosure of recovery of dues, if warranted, criminal proceedings may be initiated.

We, therefore, advise you to rectify default in time and will thereby preclude the contingency for declaring you as a wilful defaulter.

Besides above, the bank will take appropriate legal actions for recovery of bank dues without any further reference at your risk, responsibility and costs."

4. Learned senior counsel for the petitioners argues that, as per the Master Circular on Wilful Defaulters dated July 1, 2015, issued by the Reserve Bank of India (RBI), the Chief Manager of the respondent no.1? bank did not have the authority to issue such notice. In this context, learned senior counsel relies on Clause 3, sub-clauses (a), (b) and (c) of the said Master Circular, which are as follows:

### "3. Mechanism for identification of Wilful Defaulters

The mechanism referred to in paragraph 2.5 above should generally include the following:

(a) The evidence of wilful default on the part of the borrowing company and its promoter / whole-time director at the relevant time should be examined by a Committee headed by an Executive Director or equivalent and consisting of two other senior officers of the rank of GM / DGM.

(b) If the Committee concludes that an event of wilful default has occurred, it shall issue a Show Cause Notice to the concerned borrower and the promoter/whole-time director and call for their submissions and after considering their submissions issue an order recording the fact of wilful default and the reasons for the same. An opportunity should be given to the borrower and the promoter/whole-time director for a personal hearing if the Committee feels such an opportunity is necessary.

(c) The Order of the Committee should be reviewed by another Committee headed by the Chairman/Chairman & Managing Director or the Managing Director & Chief Executive Officer / CEOs and consisting, in addition, to two independent directors/non-executive directors of the bank and the Order shall become final only after it is confirmed by the said Review Committee. However, if the Identification Committee does not pass an Order declaring a borrower as a wilful defaulter, then the Review Committee need not be set up to review such decisions."

5. It is argued that a Show Cause Notice, if at all, could be issued by the committee envisaged in Clause 3, headed by an Executive Director or equivalent and consisting of two other Senior Officers of the rank of GM/DGM.

6. In the present case, the Chief Manager of the concerned branch of the bank issued the notice, without having any authority under the law to do so.

7. It is argued that if the notice, particularly the last paragraph thereof, is taken in its proper context, a warning was issued to the petitioner no. 1 to rectify alleged defaults within ten (10) days from the receipt of the notice. Consequences of non-rectification, as contemplated in the notice, would entail the bank intending to disclose or publish the name of the petitioner no.1 and its Director/Partner/Proprietor as wilful defaulter in such manner and through such medium as the bank or RBI, in their absolute discretion, might think fit.

8. The consequences thereof were also mentioned in the notice, inter alia, threatening non-sanction of additional facility by any bank/financial institution, debarring entrepreneurs/promoters from institutional finance, legal process, etc.

9. By relying on an unreported judgment dated January 9, 2020 passed by this court in W.P. No. 603/2019 [Murlidhar Ratanlal Exports Ltd. & Anr. vs. Punjab National Bank & Anr.], learned senior counsel argues that the authority issuing the notice in the said case, being a 'Centralized Loan Processing Centre' of the respondent no. 1, had no power to do so and only the Committee, as contemplated in the Master Circular, had such authority.

10. Learned counsel for the respondents argues that the impugned notice was merely a caution given by the bank to its customers, that is, the writ petitioner, for rectifying its defaults and was not, by itself, a declaration that the petitioner no.1 was a wilful defaulter. It is argued that the said notice was rather an opportunity given to the petitioner no.1 to avoid being declared as a wilful defaulter and was for the benefit of the petitioners themselves, rather than being a penal action against the petitioners. In this context, learned counsel for the respondents cites Clause 5.1 of Recovery Division Circular No.22/2015 dated August 31, 2015, issued by the Recovery Division of the respondent no.1 - bank regarding 'Wilful Defaulters and Action Thereagainst'.

11. The said clause is reproduced below:

"5.1 A. When Borrower is to be declared as Wilful Defaulter

Preliminary Notice to Rectify Default

Immediately on classification of an account as NPA and subsequent identification of the specific events/transactions perceived to have constituted as "Wilful Default", as a measure of natural justice, Branches are advised to call upon the borrower(s) including the identified persons as per draft letter Annexure-I by registered post with AD as well as E-mail, if available, giving them 10 days time to rectify the default, indicating that the Bank intends to classify them as wilful

defaulter.

Notice be sent to each identified persons, specifying each events of default on his part. For e.g: They have the capacity to pay, but not paying, there is diversion/ siphoning of funds, sale of charged assets without depositing proceeds in the account.

B. When Guarantors (Individuals or Non-group Corporates or Group Corporates) are to be declared as wilful defaulters:

Serve Recall/Demand notice on the guarantor as per the format devised by the bank."

12. It is submitted that the said Circular was in consonance with the RBI Guidelines and was issued subsequent to the Master Circular dated July 1, 2015. As such, it is argued that the bank was well within its jurisdiction to issue the said notice, pursuant to the said Circular.

13. The third argument advanced by the respondents is that the petitioners have not come with clean hands, since a huge amount is due from the petitioners, the repayment of which has deliberately been withheld by the petitioners. As such, it is submitted, that writ court ought not to grant a relief to such litigants.

14. A perusal of the relevant clause of the Master Circular dated July 1, 2015, issued by the RBI and, as such, binding on all banks, particularly Nationalized Banks of India, including respondent no.1 - bank, that is, clause 3, makes it abundantly clear that the Committee contemplated therein has to issue the Show Cause Notice to the concerned borrower and call for their submissions and, after considering their submissions, issue an order recording the fact of wilful default and the reasons for the same. Clause 3(b) further provides that an opportunity should be given to the borrower and the promoters/whole-time Director for a personal hearing, if the Committee feels such an opportunity is necessary.

15. Sub-clause (c) of Clause 3 provides for a further review of the order of the Committee, which issued the Show Cause Notice, by another Committee headed by the Chairman/Chairman and Managing Director or the Managing Director and Chief Executive Officer/CEOs and consisting, in addition, of two independent Directors/Non-Executive Directors of the bank and that the order shall become final only after it is confirmed by the said Review Committee. The Review Committee, as per sub-clause (c), need not even be set up in the event the Identification Committee does not pass an order declaring a borrower as a wilful defaulter.

16. Sub-clause (a) of clause 3 categorically provides that the evidence of wilful default should be examined by a Committee headed by an Executive Director or equivalent and consisting of two other Senior Officers of the rank of GM/DGM, which Committee itself will issue the Show Cause Notice as contemplated in sub-clause (b).

17. In the present case, it is evident that no such Committee was formed at all, either for taking evidence of wilful default and issuing Show Cause Notice, or for review, if such an order is passed.

18. The purport of the impugned notice is unambiguous as to the consequence thereof. If the notice stopped at asking the alleged defaults to be rectified and indicated that, in the event of non-rectification, the bank would take steps in consonance with clause 3 of the Master Circular of the RBI dated July 1, 2015, there could not have been much grievance on the part of the petitioners. Unfortunately, the impugned notice did not stop at that but threatened in unambiguous terms, that after the expiry of ten days, in the event the perceived defaults were not rectified, the bank intended to unilaterally disclose or publish the name of the borrower as wilful defaulter in such manner and through such medium as the bank or the RBI, in their absolute discretion, may think fit.

19. Learned counsel for the respondents tries to juggle with the expression "intends" to argue that the notice was merely a prior warning and the word "intends" itself indicates that it was not necessary that the bank would actually disclose the names of the borrowers as being wilful defaulters.

20. However, such an interpretation is absurd, since there was no protective screen between the proposed intention of the bank and its actual implementation by disclosure or publication of the name of the borrower as wilful defaulter. The term "intends" automatically connotes an implicit threat of carrying out such intent at the arbitrary and unilateral whims of the bank. In a hypothetical situation, where the ten days had elapsed and, in the perception of the bank alone, the alleged defaults were not rectified, there was nothing to restrain the bank from disclosing or publishing the name of the borrower as wilful defaulter, by carrying out such intent to its logical conclusion. Hence, the notice tantamounted to declaration of the borrower as wilful defaulter, with only a pause of ten days in the meantime from the receipt of such notice, without even permitting the borrower to show any cause or be heard on such declaration. The declaration or publication as wilful defaulter was an automatic corollary of the notice after ten days from receipt and sought to usurp the power restricted to the Committee envisaged in Clause 3(a) of the Master Circular of the RBI, followed by a review by another Committee, as contemplated in Clause 3(b) of the same .

21. The other linguistic jargon sought to be interpreted on behalf of the respondents was the expression in the incriminating clause of the impugned notice, immediately following the expression "as wilful defaulter", being as follows:

"In such manner and through such medium as the bank or RBI in their absolute discretion may think fit".

22. Learned counsel for the respondents seeks to impress upon the court that such expression meant that whatever action would be taken would be in the

discretion of the RBI and as such, would comply with the Master Circular of the RBI.

23. However, the same logic is equally absurd as the previous one, since it was nowhere mentioned in the impugned notice that the Master Circular would be followed. On the contrary, the expression relied on by the respondents merely pertained to the manner and medium through which the disclosure or publication of the name of the borrower as wilful defaulter would be made. The said expression did not have anything to do with an adjudication of wilful defaulter as per the Master Circular of the RBI but only related to the mode of publication.

24. Moreover, even if the said expression related to the mode to be followed in declaration of the borrower as wilful defaulter, which is actually not the case, it would also be contrary to the RBI Master Circular, since the expression in question leaves it on the absolute and arbitrary discretion of not only the RBI but the bank itself for the decision to be taken, without following due process as contemplated in Clause 3 of the Master Circular. This modus operandi patently militates against the underlying principle of Clause 3 of the Master Circular and is de hors the same.

25. The purported Recovery Division Circular No. 22/2015 dated August 31, 2015, issued by the Recovery Division of the respondent no.1-bank itself, at least so far as it relates to Clause 5.1 therein, which has been quoted above, is de hors the Master Circular itself and should be struck down on such ground alone.

26. However, the notice impugned in the present writ petition went one step beyond Clause 5.1 of the Recovery Division Circular, insofar as the said Circular stopped at giving the alleged defaulter ten days' time to rectify the default and to indicate that the bank intends to classify it as wilful defaulter, whereas the respondent no.1, in the impugned notice, was overzealous in not only stopping at communicating such intention but also threatened to disclose or publish the name of the borrower as wilful defaulter and also warned the borrower of the implications thereof.

27. This was not only uncalled for and unwarranted, but also went beyond Clause 5.1 of the Recovery Division Circular itself.

28. However, a closer scrutiny of Clause 5.1 reveals that it was not squarely contrary to the Master Circular of the RBI, since the clause in question provided that only on classification of an account as NPA and subsequent identification of the specific events/transactions "perceived to have constituted" as wilful default, the branches were advised to call upon the borrowers, giving them ten days' time to rectify the default. The following consequence was that the bank would intend to classify them as wilful defaulters, which leaves the leeway for the Master Circular to be followed subsequently by the formation of an Identification Committee as contemplated in Clause 3(a) and the subsequent steps being taken in terms of the RBI Master Circular. As such, this court stops short of striking down Clause 5.1 of the Recovery Division Circular No.22/2015 dated August 31,

2015 of the respondent no.1?bank.

29. Yet, the notice impugned in the present writ petition was categorically contrary to not only the Master Circular dated July 1, 2015 of the RBI but even beyond the contemplation of the Recovery Division Circular dated August 31, 2015, as encapsulated in Clause 5.1 thereof.

30. Hence, the impugned notice dated December 16, 2019 was de hors the law and against the principles of natural justice, particularly the doctrine of audi alteram partem. As such, the said notice, not being tenable in the eye of law, is required to be set aside.

31. Accordingly, W.P. No. 12 of 2020 is allowed on contest, thereby quashing the notice dated December 16, 2019 issued by the respondent no.1?bank to the petitioners, which notice is annexed at page 23 of the instant writ petition, as annexure P?1.

32. It is made clear that this order will not preclude the respondents from proceeding in accordance with law, in the event the respondents find it necessary, to identify the petitioners as wilful defaulters in consonance with Clause 3 of the Master Circular of the RBI dated July 1, 2015.

33. There will be no order as to costs.

34. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.