(2005) 04 BOM CK 0066

In the Bombay High Court

Case No : Writ Petition No. 502 of 2005

Kanwar Vilas Raj Nath and Another APPELLANT

Vs

Syndicate Bank RESPONDENT

Date of Decision : 12-04-2005

Acts Referred:

Citation : (2005) 4 ALLMR 39 : (2005) 4 BC 343 : (2005) 5 BomCR 302 : (2005) 127 CompCas 427 : (2005) 3 MhLj 913

Hon'ble Judges : S.C. Dharmadhkari, J;H.L. Gokhale, J

Bench : Division Bench

Advocate : I.M. Chagla and Prakash Shah, instructed by DSK Legal, for the Appellant;

Final Decision : Dismissed

Judgement

H.L. Gokhale, J.—Heard Mr. Chagla, Senior Advocate in support of this petition.

2. The petition challenges an order of Debts Recovery Appellate Tribunal ("DRAT") on two Miscellaneous Appeals arising out of two Miscellaneous Applications filed by the petitioners herein to the Debt Recovery Tribunal (DRT) to seek a direction for One Time Settlement (OTS). These applications having been rejected, the two appeals bearing Miscellaneous Appeal Nos. 358 and 360 of 2003 were carried to the DRAT. The DRAT has dismissed both these appeals by a common order passed on 4th November 2004 which is impugned in the present petition. These Miscellaneous Applications were made in the original application filed by the respondent-Bank which are pending for final disposal. The writ petition is against an order on Appeal from interlocutory order.

3. The question which arises in these appeals is with respect to the coverage of the Reserve Bank of India (RBI) circular of 29th January 2003 which modifies the guidelines contained in the earlier circular of 27th July 2000. The petitioners submit that although the relevant clause of this circular with respect to coverage provides that the revised guidelines will cover Non-Performing Accounts (NPAs)

as on 31st March 2000, what one has to see is as to when the particular account became a Non-Performing Account. It is the further submission of the petitioners that the concerned account became a Non-Performing Account way back in the year 1978-79 and if the amount in petitioners'' account claimed by the respondent-Bank at that time is less than what is stipulated in the circular, the respondent is bound to accept the petitioners'' offer of OTS.

4. It is material to note that the claim of the respondent-Bank in about 20 suits is nearly Rs. 116.47 Crores. An application for OTS was made to the respondent-Bank after the earlier guidelines dated 31st March 1997 were issued by Reserve Bank of India. The petitioners want the respondent-Bank to settle its claim against the petitioners with respect to two NPAs as in 1978-79 where the amount due in one account was only Rs. 25.99 Lakhs and the other was Rs. 98.84 Lakhs. Naturally, the respondent-Bank rejected the proposal.

5. Before we proceed further, it would be appropriate to refer Clause (A)(i) of the Guidelines for compromise settlement of chronic NPAs up to Rs. 10 Crores providing for coverage. It reads as follows:-

" (i) Coverage

a) The revised guidelines will cover all NPAs in all sectors irrespective of the nature of business, which have become doubtful or loss as on 31st March 2000 with outstanding balance of Rs. 10.00 crore on the cut-off date.

b) The guidelines will also cover NPAs classified as sub-standard as on 31st March 2000 which have subsequently become doubtful or loss.

c) These guidelines will cover cases on which the banks have initiated action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and also cases pending before Courts / DRTs / BIFR, subject to consent decree being obtained from the Courts/DRTs/BIFR.

d) Cases of willful default, fraud and misfeasance will not be considered.

e) The last date for receipt of applications from borrowers would be as at the close of business on 30th April 2003. The processing under the revised guidelines should be completed by 31st October 2003. "

6. Thus, as this clause provides and as can be seen, the revised guidelines are to cover all NPAs which have become doubtful or loss as on 31st March 2000 with outstanding balance of Rs. 10.00 crore and below on the cut-off date. It is material to note that sub-clause (c) provides that these guidelines will cover cases on which the banks have initiated action and also cases pending before DRTs subject to consent decree being obtained from the Courts/DRTs/BIFR. Therefore, a consent of the bank, which has initiated the proceedings, is equally material.

7. Mr. Chagla, learned Counsel appearing for the petitioners, drew our attention to the correspondence between another Nationalised Bank, IDBI and Reserve

Bank of India. He pointed out that in the reply dated 28th April 2003 by Reserve Bank of India to IDBI, it has been mentioned that the cut-off date 31st March 2000 is only for the purpose of determining the eligibility of an NPA under the OTS and not determining the outstanding balance. He also drew our attention to Para 2(a) of the letter which states that the outstanding balance for purpose of the OTS should comprise the entire amount till the material date i.e. the date of transfer to the protested bills account or the date when the account was categorized in the doubtful category, whichever was earlier. Mr. Chagla submitted that this letter of RBI with its interpretation of the Guidelines was binding on the respondent-Bank. In this behalf, he relied upon a judgment of the Apex Court in the case of Central Bank of India Vs. Ravindra and Others, and particularly sub-paragraph (5) of Para-55 thereof. In sub-para (5), it has been held that RBI has been issuing directions/circulars from time to time which, inter alia, deal with the rate of interest which can be charged and the periods at the end of which rests can be struck down, interest calculated thereon and charged and capitalised. It should continue to issue such directives and its circulars shall bind those who fall within the net of such directives. As can be seen, the judgment is about the rates of interest to be fixed by RBI and obviously such directions undoubtedly bind the other banks. This judgment cannot, however, be extended to guidelines involved in the present case, which clearly state that the OTS is to be arrived by a consent decree based on the compromise with the concerned bank.

8. Mr. Chagla then relied upon a judgment of a Division Bench of this Court in the case of Sathe Biscuits and Chocolates Company and Anr. v. Bank of Maharashtra and Ors. reported in 2004 (2) Bj 417 where at the stage of execution these guidelines were sought to be pressed into service. The Division Bench has held that Clause (c) of the above Guidelines deal with two types of cases. So far as the actions for recovery of dues under the Securitisation Act are concerned, the directives of RBI get attracted. When it comes to the later part, it refers to cases pending before Courts/DRTs/BIFR subject to consent decree being obtained from them. These guidelines cannot apply to execution proceedings and stop them. The judgment does not carry the case of the present petitioners any further.

9. Lastly, Mr. Chagla referred to an unreported order of a Division Bench order dated 3rd July 2003 in Writ Petition No. 973 of 2003 of this Court. In that matter also a decree had been passed against the petitioner. It was passed prior to the circular of 29th July 2003 and yet OTS in terms thereof was sought. The RBI had clearly stated that the guidelines for OTS do not apply to matters where decrees are already passed. Mr. Chagla referred us to a sentence in para-6 of the order that according to RBI the objective of circular dated 29.1.2003 was to provide a fast track channel for recovery of NPAs. We fail to see as to how this order or the observation helps the petitioners in any way.

10. We have referred to the relevant clause of the circular dated 29th January 2003. The circular clearly states that though certain guidelines are laid down therein with respect to one time settlement, the settlement is subject to consent

decree being obtained. In the present case, when the claim of the respondent-Bank was over Rs. 116 Crores, it could not be said that the Bank had erred in opposing any such application for one time settlement for Rs. 25.99 and Rs. 98.84 Lakhs. The judgment in the case of Central Bank of India v. Ravindra (supra) cited by Mr. Chagla was with respect to the rate of interest and surely, RBI circulars of rate of interest are binding on the banks. As far as the present circulars are concerned, there is no difficulty in saying that those circulars and interpretation thereof by RBI will have to be respected by the banks concerned, but it cannot be ignored at the same time that the circulars in terms provide that OTS is subject to a consent decree being obtained. Any interpretation of such a circular cannot force a bank which has a claim over Rs. 10 Crores (Rs. 116.47 Crores in present case) to accept the settlement of hardly over a crore of rupees and that is what the respondent-Bank has done in the present case. The impugned orders are also correct when they provide that the amounts due are to be examined as on 31.3.2000 as provided in the guidelines and not way back in 1998-99 when the proposals were made first. In our view, therefore, the DRT and DRAT could not be faulted for not directing the respondent-Bank to accept the one time settlement. Petition is, therefore, dismissed.