

(2004) 08 DEL CK 0009

In the Delhi High Court

Case No : Writ Petition (C) No. 3597 of 2003

Mohinder Puri and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 09-08-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 113 DLT 341

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Arvind Nigam and M.R. Shamshad, for the Appellant; S.K. Mittal, for the Respondent No. 1, Sanjeev Bhandari, for the Respondent No. 2 and H.S. Parihar, for the Respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The petitioners are aggrieved by the denial of respondent Nos. 2 and 3, Punjab and Sind Bank and Reserve Bank of India respectively, to consider the case of the petitioners under revised Guidelines dated 29.1.2003 for compromise settlement of chronic Non-Performing Assets (for short, "NDAs") of public sector banks.

2. The petitioners have tried to set out long pending disputes and litigations between the parties as a background to filing of the present petition. It is really not necessary to go into detail of the same and it would suffice to say that petitioner No. 1 had handed over title deeds of various properties on 1.3.1975 to respondent No. 2 bank to secure the loan facilities. There is dispute to the extent of what the petitioner claims as non-denial of requisite facilities. There is, however, no dispute that a sum of Rs. 5 lakhs was appropriated by respondent No. 2 bank as margin money for the bank guarantee of Rs. 19.25 lakhs issued by the said bank in favor of the State of Rajasthan. Two of the properties were also transferred to third parties between 1975 and 1978 with which the petitioners claim that they are aggrieved, though it is not disputed, that no legal

proceedings were initiated against the transfer of those properties by respondent No. 2 bank.

3. There were certain disputes, which arose in the year 1980 between the petitioners and the State of Rajasthan and Suit No. 481 of 1980 was filed to restrain encashment of the bank guarantee in which respondent No. 2 bank was also made a party. It is stated that in the year 1981, the parties also agreed to refer the disputes to arbitration. This aspect was sought to be emphasized by learned Counsel for the petitioners to show that all the parties had agreed for arbitration, but at the outset, it may be stated that this plea cannot be accepted by reason of the nature of the suit and the impleadment of respondent No. 2 bank only in the capacity of a bank, which had issued the bank guarantee. This is also apparent from the subsequent Order dated 9.11.1982 wherein it was recorded that the disputes between the plaintiff and the State of Rajasthan have been referred for determination by arbitration and, thus, no further proceedings were called for in the suit. The petitioners, however, filed proceedings under the Indian Arbitration Act, 1940 (for short, "the said Act") in August, 1983 even against respondent No. 2 being Suit No. 1062A of 1983 under Sections 8, 9 and 20 of the said Act, which is stated to be still pending.

4. In the year 1985, some proposal for settlement was made and petitioner No. 2 is stated to have been submitted a cheque dated 5.11.1985 for Rs. 40 lakhs to respondent No. 2 bank, but the same was given conditionally only if the proposals made by the company were duly ratified by the Board of Directors of the Bank. The Board is stated to have passed certain resolutions for compromise of the matter, but apparently no final picture emerged.

5. Respondent No. 3, Reserve Bank of India, on 27.7.2000 issued certain Guidelines for recovery of dues relating to NPAs of public sector banks applicable to respondent No. 2 bank. The Guidelines provided for the banks to follow a non-discretionary treatment for settlement of NPAs covered under the revised scheme without any discrimination and these revised Guidelines were to cover all NPAs. However, the Guidelines were "not to cover cases of default, fraud and malfeasance".

6. The petitioners wanted their case to be considered under the said Guidelines dated 27.7.2000 and filed a writ petition bearing No. 7650 of 2000 before this Court. The petitioners also addressed a legal notice dated 20.12.2000 in respect of the same to respondent No. 3 RBI. In response to the legal notice, Counsel for the petitioners received a letter dated 6.1.2001 stating that the case of petitioners was being examined. This was followed up by communications dated 11.1.2001 and 2.2.2001 to the fact that the matter had been taken up with respondent No. 2 bank. The writ petition No. 7650 of 2000 was disposed of on 19.3.2001 when the communications were placed on record showing that RBI was pursuing with respondent No. 2 the issue of applicability of the Guidelines to the case of the petitioners. The petitioners were finally informed by the letter dated 19.2.2002 that the case of the petitioners could not be considered under

the said Guidelines as the petitioners were "willful defaulter". The letter is in the following terms:

"This is in further reference to our letter dated February 2, 2001 in reply to your letter requiring the Reserve Bank to ensure the enforcement of its Guidelines issued vide its circular DBOD. No. BP. 11/21.01.040/99-00 dated 27 July, 2000.

2. In this connection, you are advised that the matter was examined by us based on the inspection of the account of your client and clarification obtained from Punjab & Sind Bank. It has been found that your client was not willing to repay the dues owed to the bank despite having sufficient means to repay. Deliberate non-payment of the dues despite adequate cash flow and good net worth, falls within the category of "willful default" (in terms of the Reserve Bank circular DBOD.BC.DL (W) 12/ 20.16.2002(1) 98-99 dated 20 February, 1999, copy whereof is enclosed.

3. In terms of paragraph 3A(i)(d) of our circular DBOD. No. BP.BC 11/ 21.01.040/99 dated 27 July, 2000, cases of willful default, fraud and malfeasance are excluded from the purview of the Guidelines for recovery of dues relating to non-performing assests.

4. In view of the above, you are requested to advise your client suitably in the matter. Despite that if your client chooses to file any legal proceedings against the Reserve Bank in a Court of law, the Reserve Bank will have no option but to defend the same at the risk of your client as to costs and consequences.""

7. The revised Guidelines came into force on 29.1.2003. The petitioners are aggrieved by the fact that their case has been considered as one of willful defaulter, while it is not so in view of the background set out in the petition and have also relied on the revised Guidelines.

8. The stand of respondent No. 2 bank is that the petitioners have the capacity to pay entire dues, but have failed and neglected to willfully and deliberately do so. It may be noticed that the petitioners have also relied upon the report of the Chartered Accountant, which was prepared in pursuance to directions of the Court in Suit No. 1190 of 1999 filed by petitioner No. 1, but respondent No. 2 has filed objections to the said report. It is, thus, submitted that no reliance can be placed on the said valuation. The report had to specify as to the amount which would be due from the petitioner to respondent No. 2 bank. Petitioner No. 1 has even, offered to pay an amount of Rs. 9,81,566.76 which as per the report of the Chartered Accountant was owed by the petitioners as in March, 1987, but the same was refused by respondent No. 2 since according to the said respondent the claim filed originally by the petitioner was for Rs. 1.06 crores and the cheque being offered by the petitioners was conditional on the title documents being released of the mortgaged properties. This has been recorded in the proceedings of 2.9.2003.

9. The counter affidavit of respondent No. 3 RBI has set out background to the

Guidelines being brought into force. It has, thus, been stated that various measures were taken to ensure soundness of the bank and interest of the depositors and, thus, certain Guidelines were laid down for credit appraisal and credit sanction. Prior to the year 1992, the power of writing off of all the bad debts/losses was vested in the Board of Directors, but subsequently the said power was delegated to various functionaries subject to certain safeguards and conditions. The Guidelines were circulated on 28.7.1995 and a circular was issued on 27.5.1999 for constitution of Settlement Advisory Committees. The further Guidelines were issued on 27.7.2000 and thereafter on 29.1.2003.

10. It is in pursuance to instructions of the Central Vigilance Commission for collection of information in the case of willful defaults of Rs. 25 lakhs and above that, a scheme was framed. The name of petitioner No. 2 company did not appear in the list made thereafter since the said company is stated to have been declared a willful defaulter by respondent No. 2 bank in 1992 itself. The decision to reject the case of the petitioners under the Guidelines was taken not only on the basis of the communication of respondent No. 2 in the year 1992, but on the basis of inspection of the account of the petitioners and after seeking clarifications from respondent No. 2 bank. It is stated that the petitioners were not willing to repay the dues to respondent No. 2 bank despite having sufficient means to repay and such a person falls within the category of willful defaulter, which are excluded from the purview of the Guidelines for recovery of dues relating to NPAs. The term "willful defaulter" is stated to have been defined in a circular dated 30.5.2002 as under:

"A willful defaulter would be deemed to have occurred if any of the following events is noted:

- (a) The unit has defaulted in meeting its payment/repayment obligations to the lender even when it has the capacity to honour the said obligations.
- (b) The unit has defaulted in meeting its payment/repayment obligations to the lender and has not utilised the finance from the lender for the specific purposes for which finance was availed of but has diverted the funds for other purposes.
- (c) The unit has defaulted in meeting its payment/repayment obligations to the lender and has siphoned off the funds so that the funds have not been utilised for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets."

11. Learned Counsel for the petitioners have greatly relied upon the past history of the case to show that if the same is read with the report of the Chartered Accountant, it would show that there is no such huge amount outstanding against the petitioners and various deposits available are sufficient to adjust the amounts due from the petitioners. It is, thus, stated that the petitioners are not covered within the definition of "willful defaulter". It is stated that the Guidelines have to be made applicable since it is not a case of fraud and malfeasance. It is submitted that the deposit of Rs. 5 lakhs and the interest accrued on the

deposits amounts to Rs. 62,31,750.76 as on the date of the report. This position is disputed by learned Counsel for the respondents to say that they have challenged the report and that the petitioners are still not willing to settle the accounts since on the one hand the said petitioners claim interest to have accrued on the deposits lying with the bank as security, while on the other hand petitioners are unwilling to give credit of interest on the amounts due from the petitioners.

12. Learned Counsel for the petitioners submitted that petitioner No. 1 was at least entitled to a hearing and the petitioner would have got an opportunity to show that it was not a willful default.

13. Learned Counsel for the respondents have disputed this position on the ground that it is not envisaged that for every such case, a hearing should be given and, thus, regulations are to be uniformly applied, but based on the records of a party. It is submitted that the object is to encourage repayment through the process of reduction in interest where there are NPAs. It was, thus, submitted that where the petitioners hold the assets and the debts are secured by mortgage of properties and the petitioners keep on litigating without wanting to settle the claims, benefit of the regulations cannot be given to the petitioners.

14. I have considered the submissions advanced by learned Counsels for the parties.

15. In my considered view, the matter in controversy falls in a narrow compass. The past history of the litigation between the petitioners and respondent No. 2 bank is not relevant except to the extent to show that there are disputes between the parties. Respondent No. 2 bank has already filed proceedings for recovery of the amount, The petitioners cannot be permitted to raise grievance in respect of certain transactions, which were never challenged by the petitioners over a period of time. However, to the extent that the petitioners were claiming that the accounts of respondent No. 2 bank did not reflect the correct position, a Chartered Accountant was appointed by the Court to examine the accounts. However, the report has been objected to by respondent No. 2 bank and the same is still pending adjudication. Thus, this question is still open and certainly in the present proceedings, it cannot be decided as to what is the status of the petitioners to the extent of the outstanding.

16. There is force in the contention of learned Counsel for the respondent that the very object of the Guidelines is that where there are NPAs, a party must be encouraged to repay the amounts at reduced interest rates. However, in the present case, there are serious disputes pending before the Civil Court and the amounts due from the petitioners are secured by mortgage of properties. It is not a case where the petitioners are devoid of means to make the payment, but though that may be subject to realisation from the sale of mortgaged properties, if it so happens. Thus, it is not a case where the petitioners are incapable of making payment, but that the petitioners are disputing that they are liable to pay

the amount claimed by the respondents. The case of the petitioners would, thus, fall within the definition of a "willful defaulter" in terms of sub-para (a) of the circular dated 30.5.2002. This is so since the petitioners would be defaulter when there is default in meeting the obligations and making payment even when it has the capacity to honour the obligations. The emphasis, in the present case, would be on the ability and capacity of the petitioners to be able to meet the obligations. Since the amounts are secured by mortgage of properties, the means are available. There is, however, no willingness on the part of the petitioners albeit on account of disputes they have raised about the amounts which has been claimed from the petitioners by respondent No. 2 bank.

17. I am of the considered view that in such a situation, no mandamus can be issued to the respondents compelling them to apply the principles of the Guidelines for reduction of interest and reducing the liability of the petitioners.

18. It is also to be kept in mind that the decision of RBI is based not solely on the circular of 1992 and the same has been arrived at after scrutinizing the accounts of the petitioners. There cannot be a principle of personal hearing in all such cases, though it is always open to respondent No. 3 RBI to seek any clarification, if so required.

19. I am, thus, of the considered view that the reliefs as claimed for by the petitioners are not maintainable and cannot be granted to the petitioners.

20. The writ petition is accordingly dismissed leaving the parties to bear their own costs.