

(2005) 11 DEL CK 0084

In the Delhi High Court

Case No : RA. No. 417/04 and CM. 13642/04 in WP (C) 5137 of 2002

Mono Caps (India)

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 07-11-2005

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13

Citation : AIR 2006 Delhi 44 : (2006) 1 BC 425 : (2006) 133 CompCas 478 : (2005) 125 DLT 217

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : J.P. Gupta, for the Appellant; Atul Kumar and Sanjiv Kakra, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Petitioner has preferred this review application, aggrieved by the order dated 30th April, 2004, by which the writ petition was dismissed. The review application is accompanied by an application for condensation of delay, inasmuch as the review application was filed on 26th October, 2004. It is urged in the application for condensation of delay that petitioner had preferred LPA. No. 800/04, against the dismissal of the writ petition. After some arguments, petitioner sought leave to withdraw the appeal before the Division Bench on 18th October, 2004, with liberty to move a review application. Petitioner's contention was that the benefit of one time settlement had been denied by the impugned judgment on the ground that the decree had been executed, while it had not been so executed.

2. As the parties are agreed that the review application may be disposed of on merits, the delay in preference of the review application is condoned.

3. Mr. J.P. Gupta, learned counsel for the petitioner/review applicant submits that the execution of the decree was still pending and hence the impugned judgment,

which proceeded on the premise that decree had been executed and hence denied one time settlement, deserves to be recalled. Initially, Mr. Gupta had submitted that the execution was pending in view of the objection by a third party against the sale of the properties, which were sought to be sold in execution proceedings. However, subsequently it was stated that objection to the execution had been filed by the petitioner.

4. Reply to the review application has also been filed. The impugned judgment had noticed the decision in writ petition No. 973/2003, titled Chemosyn Limited and Anr. v. Union Bank of India and Anr., wherein the Reserve Bank of India had sought to clarify the position with regard to the application of guidelines in the following words:

"These guidelines do not cover the cases where decrees have already been passed. The objective of the RBI Guidelines is to provide a fast track channel of recovery of NPAs. Whereas in the case of decreed debts, the banks can straightaway execute the same and recover their dues. In the case of decreed debts the question of compromise/settlement does not arise."

5. Reference may also be made to the Guidelines dated 12th February, 2003 and Clause 1.6.5.

1.6.5 Cases pending before Courts/DRTs/BIFR-Whether cases where decree obtained/Recovery Certificates (RC) issued/BIFR order available are also eligible?

Yes, subject to consent decree/order being obtained from Courts/DRTs/BIFR.

6. Learned counsel for the petitioner submits that it would be clear from Clause 1.6.5 that even in cases where decree had been obtained and recovery certificate issued, the same could be considered for purposes of one time settlement, subject to consent decree/order being obtained from Courts/DRTs/BIFR. Mr. Gupta also mentioned that in para 5 of the impugned judgment it had been wrongly noted that the decree had been executed.

7. Learned counsel for the respondent Mr. Atul Kumar and Mr. Sanjiv Kakra, submitted that even if it was erroneously recorded in the impugned judgment that the decree had been executed, it would make no difference in the instant case. Further, even if the Reserve Bank's Policy, as set out in Chemosyn Limited & anr (Supra), of the benefit of one time settlement not being available in cases, where decree was passed, was not to be regarded as an absolute bar, the present case would still not be covered under Clause 1.6.5. The guidelines would cover only cases, which may be pending before Courts/DRTs/BIFR, subject to consent decree being obtained from the Court/DRTs/BIFR. Admittedly, in the instant case, there has been no consent decree/order from the Courts/DRTs/BIFR. This was admittedly not a case, where consent decree or consent of Courts/DRTs/BIFR had been obtained. The Guidelines may apply to pending cases, subject to the condition, as aforesaid, where decree was pending execution but consent term or consent decree is approved by the court/DRT/BIFR. In the

instant case, decree had been passed in April, 1992 and nearly 13 years have elapsed without even appeal having been preferred against the decree leaving aside any consent terms having been agreed or approved by court. Accordingly, even as per the guidelines, this case would not fall within the category, where a one time settlement could be considered or canvassed.

8. Learned counsel then sought to urge that respondents had denied the one time settlement on the ground that petitioner in the circumstances in which the suit was filed, was not entitled to the benefit of one time settlement. Petitioner contended that it was not a willful defaulter. Mr. Gupta submitted that there was discrimination against the petitioner inasmuch as that even in cases, where possession had been taken, pursuant to Section 13 of the Securitisation Act, settlements were being made by the Bank. He urged that petitioner's case was on a much better footing. Mr. Kakra refuting this submission placed reliance on para H, page 206 of the paper book, where circumstances were listed out by stating that petitioner had removed the goods from the factory and indulged in other acts in gross violation of the terms of the agreement and inter alias based on those petitioner was treated as a willful defaulter, not eligible to the benefit under the scheme for one time settlement. Petitioner during the proceeding of review petition has filed numerous letters addressed to the bank seeking One Time Settlement. The above apart from raising disputed questions of fact, which are not amenable to writ jurisdiction, cannot be permitted to be taken on record and considered at this stage.

9. Mr. Gupta next urged that the sister concern M/s. Advance Alliance of the petitioner had been given the benefit of one time settlement, where the decree had also been passed. Respondents contended that there were other relevant factors in accepting the one time settlement in the case of M/s. Advance Alliance. This cannot advance the petitioner's case, as one perspective of looking at the matter would be that the respondents were not having any bias or prejudice against the petitioner and had accepted the settlement in respect of the petitioner's sister concern. It is not necessary to dwell on this aspect any further as this is not a ground admissible in review.

In view of the foregoing discussion, it would be seen that no ground for review of the impugned judgment dated 30th April, 2004, is made out and petitioner is not eligible for one time settlement, in terms of the guidelines and policy of RBI and in the facts of the present case, where the decree had been passed in 1992 and had not even been appealed against.

Review application is dismissed.