(2004) 04 DEL CK 0025

In the Delhi High Court

Case No : CW 5137 of 2002

Mono Caps (India) APPELLANT

Vs

State Bank of India and Others RESPONDENT

Date of Decision : 30-04-2004

Acts Referred:

Citation : AIR 2004 Delhi 349 : (2004) 3 BC 436 : (2004) 122 CompCas 517 : (2004) 75 DRJ 340

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Rikky Gupta, for the Appellant; Sanjeev Kalra and Atul Kumar for respondents 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.

1.The petitioner by this writ petition seeks a mandamus to be issued to respondents to accept the proposal of the petitioner under the ""One Time Settlement Scheme."" This is sought to be done on the basis of guidelines issued by respondent no.3-Reserve Bank of India and respondent no.2-State Bank of India on 27.7.2000 and 20.3.2001. Petitioner is also seeking quashing of the letter dated 16.6.2000 and 26.6.2001 issued by respondent no.1 by which petitioner''s proposal for accepting one time settlement as not acceded to. Learned counsel for the petitioner submits that petitioner is entitled to relief in terms of circular of Reserve Bank of India itself dated 12th February, 2003.

2. The facts in brief relevant for disposal of this writ petition are:-

Petitioner had been granted a loan in 1977. It went into default and a suit was filed on 24.5.1980 before Addl. District Judge, Jaipur for recovery of amount of Rs.9,43,100/-. After protracted litigation, suit was decreed on 28.4.1992. The crux of the controversy arising for consideration is whether petitioner is entitled to acceptance of ""One Time Settlement Proposal"" which had been rejected by respondents vide their letters dated 16.6.2000 and 26.6.2001. The respondents took the position that the petitioner was not entitled to the benefit of one time settlement under RBI guidelines. The matter was amplified in the replies given to the queries of the petitioner. The petitioner protested against the stand taken namely that the petitioner'' unit falls under the category of ''''willful defaulter'''' because of which it cannot be considered under OTS scheme.

3. Learned counsel next contended that State Bank of India was guilty of not following its own circulars and in particular he refers to the guidelines dated 12.2.2003. Following is given under clause 1.6.5. It reads as under:-

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

4. While it is true that pending cases are mentioned in clause 1.6.5 but the answer given to the question limits the applicability of the said guidelines to cases where consent decree/order is being obtained from Courts/DRT/ BIFR. Hence once a decree has been executed, the party would not be entitled to have the benefit of one time settlement.

5. The question whether guidelines would apply to cases where decrees have been passed, had been considered by the High Court of Mumbai in writ petition no.973/2003 titled Chemosyn Limited and anr Vs. Union Bank of India and anr. The Reserve Bank of India clarified the position with regard to the guidelines:-

''''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.''''

6. This approach has a rationale inasmuch as the cases in which decrees have been obtained, the bank can straightaway execute the same and recover the dues. It would Therefore be seen that the circulars are directory in nature and do not have the status of guidelines issued in terms of Section 21 of Banking Regulations Act, 1949.

7. In view of the foregoing discussion, writ petition has no merit and is dismissed.

