(2011) 11 CHH CK 0050

In the Chhattisgarh High Court

Case No : Writ Petition No. 1764 of 2005

Poonam Chand Agrawal — APPELLANT

Vs

State Bank of India and Anothers — RESPONDENT

Date of Decision : 21-11-2011

Acts Referred:

Citation : (2011) 2 CGBCLJ 515

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : M.L. Pastore, for the Appellant; Sanjay K. Agrawal, Advocate with Mr. Sudeep Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—By this petition, the petitioner seeks a direction to the respondent No. 1 to take appropriate action against the respondent No. 2 for defying the directives/instructions issued by the Reserved Bank of India (for short "the RBI") under the scheme namely; One Time Settlement of NPAs (RBI OTS - 2003) (for short "the RBI OTS - 2003") and the respondent No. 1 may also be directed to refund the excess amount of Rs. 4,15,011/- to the petitioner with interest at the rate of 15% per annum from the date of deposit. Further, the State Bank of India, Raigarh (for short "the respondent Bank") may be directed to refund the excess amount of Rs. 4,15,011/- with interest. The facts, in brief, as projected by the petitioner, are that the petitioner obtained a term loan of Rs. 3,00,000/- and case credit of Rs. 4.5 lacs in the year 1993 from the respondent Bank for installation of a paddy processing plant. However, for about 3-4 years, the plant suffered heavy losses and thereafter, the plant was closed. According to the petitioner, the petitioner has repaid the major portion of term loan; however, he could not repay the cash credit.

2. On 29.01.2003 (Annexure - P/2), the Reserve Bank of India introduced the scheme namely; RBI OTS - 2003 and issued guidelines to all the public sector banks to implement the scheme immediately in order to recover banks loan. On

the basis of the RBI OTS - 2003, the respondent Bank issued a circular dated 06.02.2003 (Annexure - P/3) to all its branches to follow the RBI guidelines and to take steps accordingly. Thus it was imperative for the respondent No. 2 to issue a notice to the petitioner before 28.02.2003 for availing the benefit of RBI OTS - 2003, but the respondent No. 2 deliberately has not issued any notice to the petitioner.

3. The petitioner made an application before the Governor, RBI on 07.03.2003 (Annexure - P/4) for considering his case as per the RBI OTS - 2003, but no action was taken. Thereafter, the petitioner started depositing the installments of the loan amount. Even the bank has refunded an amount of Rs. 3,750/- in the form of Banker''s cheque to the petitioner on the ground of excess payment, as is evident from Annexure - P/6. In spite of the said facts, the bank authorities are not releasing the title deeds of the property mortgaged to the Bank. In the meantime, by letter dated 19.03.2005 the Bank asked the petitioner to deposit an amount of Rs. 4,09,099/- showing the same as outstanding. Thus, the petitioner deposited an amount of Rs. 4,11,282/- under protest for obtaining the till deeds of mortgaged property. Hence, this petition for refunding an amount of Rs. 4,15,011/- along with interest.

4. Shri Pastore, learned counsel appearing for the petitioner, would submit that the respondent No. 2 has acted in a discriminatory manner. The respondent No. 2 has not permitted the petitioner to get the benefit of RBI OTS - 2003, which resulted into violation of the fundamental rights of the petitioner. As per clause 4 of the RBI OTS - 2003 any deviation from the settlement, guidelines could have been made only by the Board of Directors of the Bank, which was not done in the instant case.

5. On the other hand, Shri Sanjay K. Agrawal, learned counsel appearing with Shri Sudeep Agrawal, learned Advocate for the respondents, would submit that in order to get the benefit of RBI - OTS 2003, the petitioner was required to deposit an amount of Rs. 10.42 lacs and only upon being deposited the said amount, his accounts could be settled under the scheme floated by the RBI. The petitioner failed to deposit the same; therefore, his account was not settled under the RBI OTS- 2003. In fact, earlier the Bank informed the petitioner to deposit an amount of Rs. 10.42 lacs along with interest. Thereafter, reminders were also sent to him, but no initiative has been taken by the petitioner.

6. Shri Agrawal would further submit that earlier the petitioner approached the Banking Ombudsman, where the claim of the petitioner was dismissed by order dated 16.09.2004 after considering the facts and circumstances of the case in its true perspective and also after considering the response submitted by the respondent Bank. Since the petitioner himself has failed to perform the legal duty and has not deposited the amount due as per the RBI OTS - 2003, no writ of mandamus can be issued and the petition may be dismissed, as not maintainable in the eyes of law.

7. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.

8. Indisputably, the petitioner obtained loan amounting to Rs. 7.5 lacs from the respondent Bank to establish a rice mill in the year 1993. The petitioner failed to repay the said loan amount. The RBI announced a scheme namely; RBI OTS -2003 on 29.01.2003 for settlement of the old dues with the defaulting members.

9. According to the learned counsel appearing for the petitioner, The petitioner was not issued a notice before 28.02.2003 for availing the benefit RBI OTS -2003 and thereafter. Despite his best efforts the petitioner could not avail the benefit of settlement of dues under the RBI OTS - 2003.

10. On perusal, it appears that in the scheme for one time settlement of Non-Performing Assets (for Short "NPAs") for NPAs classified as doubtful or loss as on 31.03.2000, the node of payment was prescribed as under:

(iii) Payment

The amount of settlement arrived at in both the above cases, should preferably by paid in one lump sum. In cases where the borrowers are unable to pay the entire amount in one lump sum, at least 25% of the amount of settlement should be paid upfront and the balance amount of 75% should be recovered in installments within a period of one year together with interest at the existing Prime Lending Rate from the date of settlement up to the date of final payment.

11. The respondent Bank by memo dated 21.04.2003 (Annexure - R2/D) informed the petitioner for one time settlement of NPA in the following, inter alia, terms:

I. Application to be received before 30.04.2003 and settlement to be reached before 31.10.2003.

II. Minimum amount to be paid: Rs. 10.42 lacs (Rs. Ten lacs Forty Two Thousand Only) being the cut standing balance in your accounts as on 31.03.2000 plus interest as compromised after given by you and decided by competent authority.

III. Payment Terms: In one lump sum, upfront, upfront, Payment in installments would also be considered on merits, subject to at least 25% of the amount of settlement being paid upfront and the balance amount of 75% being of 1 year together with interest at Bank''s PLR from the date of settlement till date of final payment.

12. The petitioner vide letter dated 17.07.2002 (Annexure - R2/G) requested the Chief Manager of the respondent Bank that the petitioner was willing to deposit the money, if 50% of the total amount in exempted from payment of interest.

13. Thereafter, the petitioner was informed to deposit a sum of Rs. 10.42 lacs in accordance with the payment terms, as provided under the RBI OTS - 2003. The petitioner was further informed to express his willingness to settle the dues at

the earliest, but in any case before 30.04.2003. Subsequently, the petitioner was again informed vide letter dated 20.09.2003 (Annexure - R2/E) to submit his willingness and deposit 25% of the amount of the outstanding dues. Vide letter dated 23.03.2004 (Annexure - R2/F) also it was informed to the petitioner that if the petitioner was willing to go for one time settlement the petitioner should make payment of Rs. 10.42 lacs = interest @ 10.75% with clear application for settlement, agreeing with other conditions.

14. That, in the meanwhile, the petitioner had made a complaint to the Baking Lokpal, through RBI, Bhopal, alleging that the respondent Bank was not interested to settle the outstanding dues, which was declared as NPA, with the petitioner. The Banking Lokpal after having examined the facts and submissions made by the petitioner and the response of the respondent Bank dismissed the complaint and the same was intimated to the petitioner vide letter dated 16.09.2004 (Annexure - R2/C) holding that the petitioner has to deposit the initial amount, as per the terms of the settlement.

15. Having regard to the above-stated facts and the conduct of the petitioner, it cannot be held that the respondent Bank was neither willing to settle the dues nor had afforded an opportunity to the petitioner to avail the benefit of RBI OTS - 2003 on the terms & conditions of settlement, as prescribed by the RBI. The petitioner on his part has not come forward to settle the dues as per the terms and conditions of the scheme. Thus, the contention of the petitioner that the petitioner was denied the benefit of RBI OTS - 2003 is without any basis and the same deserves to be dismissed. The petitioner is not entitled to other consequential relief, sought by him, also.

16. As an upshot, the writ petition, being bereft of merit, is liable to be and is hereby dismissed. There shall be no order as to costs.