(2009) 04 MAD CK 0166

In the Madras High Court

Case No : Writ Petition No. 15812 of 2006 and W.P.M.P. No. 15571 of 2006

Sheeba Engineering Industries APPELLANT

Vs

The State Bank of India RESPONDENT

Date of Decision : 29-04-2009

Acts Referred:

Citation : (2009) 3 CTC 362 : (2009) 3 LW 659 : (2010) 7 RCR(Criminal) 1777

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : R. Suresh Kumar, for the Appellant; P.D. Adikesavalu, for the Respondent

Final Decision : Dismissed

Judgement

B. Rajendran, J.—By consent of the learned Counsel on either side, the writ petition itself is taken up for final hearing.

2. The above writ petition is filed for issuance of a writ of certiorarified mandamus to call for the records in respect of the impugned order passed

by the respondent vide his proceedings No. CMBR 510 dated 16.3.2006, quash the same and direct the respondent to accept the amount paid

by the petitioner on 15.3.2006 as a full settlement under OTS Scheme as offered by the respondent Bank vide its proceedings dated 14.11.2005.

3. The only ground of attack of the petitioner is that the State Bank of India came forward with a compromise offer for a one time settlement with

the petitioner and immediately he accepted the said offer and has also deposited the amount. But, there is a dispute as to whether the payment was

made before or after the cancellation of the offer for one time settlement. Be that as it may, the petitioner''s contention is that since the offer was made by the State Bank of India and he had accepted the offer and paid the amount , the subsequent cancellation of the one time settlement on the

ground that is is violative of the R.B.I. circular, is legally not sustainable. The compromise offer came from them and therefore he disputes the

impugned order cancelling the one time settlement dated 14.11.2005.

4. Counter affidavit had been filed on behalf of the respondents, wherein the following facts have been set out.

The State Bank of India, Ganapathy Branch, Coimbatore, the respondent herein, had filed a suit in O.S. No. 343 of 1994 before the Sub Court,

Coimbatore for recovery of debts due and payable by the petitioner and a preliminary decree was passed as early as 9.3.1999 against the

petitioner and thereafter they also filed an application for passing final decree which was pending. But, unfortunately, the State Bank of India

without taking into consideration the decree having already been passed, in the routine manner sent the proposal for One Time Settlement to every

customer including the petitioner. Therefore, such a discrepancy committed by the State Bank of India cannot be taken advantage by the petitioner

to seek for the relief of setting aside the order of the cancellation of the one time settlement. The one time settlement to be offered by the Bank

could only be in accordance with the Reserve Bank of India Circular and the circular clearly states that the cases pending before courts where

decrees have been obtained will not be covered under the RBI OTS- SME. Pursuant to the R.B.I. Circular only they have issued the impugned

order and the impugned order is valid under law.

5. I have heard the the learned Counsel appearing for the petitioners and the learned Counsel appearing for the respondents.

6. A cursory perusal of the Reserve Bank of India Guidelines would categorically indicate that the Banks cannot enter into any one time settlement,

if the suit has been filed and a decree has been passed in respect of the amount due and payable by the debtor. Admittedly, in this case the suit has

been decreed and a valid decree has been passed. Therefore the one time settlement offered by the Bank is in violation of the R.B.I Guidelines.

7. The next point for consideration would be whether in the light of the R.B.I circular, the Bank could make an offer for such One Time Settlement.

In this respect, the learned Counsel appearing for the respondent points out that unfortunately one wing of the Bank has failed to take into

consideration the relevant position and the civil suit pending before the Sub court against the writ petitioner. The earlier letter of offer was only a

routine letter sent to all the creditors. Taking advantage of such a letter, the petitioner has come forward with the present writ petition challenging

the order of the withdrawal of the O.T.S.

8. In this connection, the learned Counsel appearing for the respondent has brought to the notice of this Court the decision of the Supreme Court in

Civil Appeal No. 4929 of 2004 (Calibre Knives Pvt. Ltd. and Anr. v. State Bank of India) dated 3.4.2004, wherein the State Bank of India itself

is a party. In that case also the debtor approached the State Bank of India for one time settlement scheme evolved by them in accordance with the

guidelines of the Reserve Bank of India. But the Debt Recovery Tribunal has already passed an order in favour of the Bank and further a recovery

certificate was also issued. Without being aware of the stage of the proceedings before the Tribunal, the One Time Settlement was arrived at by

the Bank. Later on, the settlement was withdrawn by the Bank. Even in that case, the Supreme Court has passed an order which reads as follows:

Therefore, it is obvious that the letter was issued without being aware of the factual position in regard to the decision of the Debt Recovery

Tribunal and the issuance of recovery certificate.

Hence the present case is identical in nature and the same is covered by the judgment of the Supreme Court.

9. On a careful consideration of the facts and circumstances of the case and as per the decision in the unreported judgment of the Supreme Court

cited above, this Court is of the view that in this case also an identical order has been passed and an identical mistake has been committed by the

State Bank of India. Hence, the impugned order passed by the respondent is valid in law and it is only in accordance with R.B.I circular and there

is no infirmity in passing such an order. The State Bank of India is empowered to recall and withdraw the offer of One Time Settlement in

accordance with the Reserve Bank of India circular and in accordance with the judgment of the Supreme Court. The petitioner has not made out

any case for interference with the impugned order of the respondent dated 16.3.2006.

10. For the foregoing reasons, the writ petition is dismissed. Consequently, the connected M.P is closed. No costs.

