(2003) 07 GUJ CK 0056

In the Gujarat High Court

Case No : Letter Patent Appeal No. 686 of 2002 in Special Civil Application No. 7500 of 2002 with Civil Application No. 6504 of 2002

Shidimo Interaux Private Ltd. APPELLANT

Vs

Dena Bank RESPONDENT

Date of Decision : 22-07-2003

Acts Referred:
Letters Patent Act, 1865 — Clause 15

Citation : (2004) 4 BC 408 : (2004) 121 CompCas 223 : (2004) 1 GLR 348

Hon'ble Judges : M.S. Shah, J;K.R. Vyas, J

Bench : Division Bench

Advocate : P.M. Thakkar and Navin K. Pahwa, for the Appellant; B.G. Jani, for the Respondent

Final Decision : Allowed

Judgement

M.S. Shah, J.—Appeal is admitted. Mr. B.G. Jani waives service. At the request of the learned Counsel for the parties, the appeal is taken up for final hearing today and is accordingly being disposed of by this judgment.

2. This is an appeal under clause 15 of the Letters Patent filed against the judgment and order dated 12.8.2002 passed by the learned Single Judge dismissing writ petition filed by the appellants herein. The petition was directed against the order dated 19.3.2002 passed by the Ombudsman in Complaint No. 133/00-01 under the Banking Ombudsman Scheme, 1995.

3. Since this Court proposes to pass an order of remand, it is not necessary to set out all the facts in detail. Suffice it to state that the Ombudsman had framed four issues for examination, but the controversy now survives only about issue no.1. Hence the other issues are not at all referred to.

Issue no.1 about which the controversy survives, was framed as under:

"Whether the bank did/ does not observe the guidelines/ directives of the

Reserve Bank of India while undertaking the exercise of credit rating of the complainant for the purpose of ascertaining rate of interest on the Cash Credit Account ?"

After noting the rival submissions, the Ombudsman noted that the issue was deliberated at length in the conciliation meeting and both the parties mutually agreed as under:

"Bank submitted that in the year 1998, they have informed about the credit rating to the complainant which was implemented by the bank with retrospective effect i.e. from 1.3.1997. Both the parties agreed that after 1.3.1997, there is no dispute between them. For the period 1994-95 and 1995-96, party''s contention is that neither they were informed about the credit rating given to them nor they were given any opportunity to know how they were rated at P-3. Bank submitted that they will examine the record and inform to this office when they have informed the borrower about the credit rating. Bank was advised to submit a copy of calculation sheet for the perusal of Banking Ombudsman. It was submitted by the bank that the calculation sheet may be treated as privilege documents being confidential.

The Ombudsman then observed as under:

"The exercise of rating the borrowers under credit rating system for the purpose of ascertaining the rate of interest is the significant part of credit appraisal. Banks do enjoy freedom to adopt their own methods and procedures for credit rating which is one of the aspect of the whole credit appraisal of the borrower''s proposal. Since the matter relating to credit rating is a matter connected with credit decision of the bank, it may not be possible for the office to intervene in such matters."

4. The learned Counsel for the appellants has submitted that though the issue was specifically raised before the Ombudsman, the Ombudsman refused to exercise his jurisdiction and the learned Single Judge has dismissed the petition only on the ground that the dispute between the parties is based on facts and, therefore, it will not be possible for the Court to intervene in such matters in exercise of its extraordinary jurisdiction. It is submitted that since the controversy between the parties was very much capable of being looked into by the Ombudsman as per the provisions of Chapter III Clause 3(b)(i) of the Banking Ombudsman Scheme 1995, the learned Single Judge could have directed the Ombudsman to entertain the dispute on merits and thereafter to give his decision on the same.

5. On the other hand, the learned Counsel for the respondent Bank has submitted that the Ombudsman has rightly declined to go into the question of credit rating of the appellants as it is a matter related to the credit decision of the Bank and, therefore, Ombudsman cannot substitute his decision in such matters.

Before dealing with the rival submissions, it is necessary to refer to the relevant provisions of Banking Ombudsman Scheme 1995 (hereinafter referred to as ''the Scheme''). Clause 2 of the said Scheme provides that the object of the Scheme is to enable resolution of complaints relating to provision of banking services and to facilitate the satisfaction, or settlement of such complaints. Chapter III of the Scheme provides for jurisdiction, powers and duties of Banking Ombudsman. The general jurisdiction of the Ombudsman is set out in the following terms:

"The Banking Ombudsman''s powers and duties will be:

(a) to receive complaints relating to the provision of banking services.

(b) to consider such complaints and facilitate their satisfaction or settlement by agreement, by making a recommendation, or Award in accordance with this Scheme."

This Chapter further sets out the Authority of Ombudsman in the following terms in so far as it is relevant for the purposes of this petition. "As regards banking services, the Banking Ombudsman''s authority will include-

(a) all complaints concerning deficiency in service, such as:

vii) complaints pertaining to the operations in any savings, current or any other account maintained with a bank, such as delays, noncredit of proceeds to parties'' accounts, nonpayment of deposits/ nonobservance of the Reserve Bank directives, if any, applicable to rate of interest on deposits;

(b) Complaints concerning loans and advances only insofar as they relate to:

(i) nonobservance of Reserve Bank directives on interest rates.

Xxxxxxxx iii) nonobservance of any other directions or instructions of the Reserve Bank, as may be specified for this purpose, from time to time. "

7. The dispute between the parties is about the rate of interest levied by the bank on the cash credit account of the appellants for the years 1994-95 and 1995-96. According to the bank, the interest rates depend upon the credit rating of the customer which is being done on the basis of the circulars of Reserve Bank of India. The grievance of the appellants is that by giving poor credit rating to the appellants at P-3 which was not at all justified or borne out by the appellants'' repayment record, the respondent bank charged higher rate of interest. Although the appellants had raised dispute about credit rating for a fairly long period commencing from 1988 before Ombudsman, the dispute was confined to the years 1994-95 and 1995-96 and, therefore, we have not permitted the appellants to raise any dispute for the prior period. As was made clear before the Ombudsman and also before us, the dispute is only for the period of two years from 1994-95 and 1995-96 in respect of cash credit account. However, after referring to the deliberations for the aforesaid two years in the conciliation meeting as extracted in the above quoted para, the Ombudsman declined to exercise his jurisdiction only on the ground that the credit rating

system for the purpose of ascertaining the rate of interest is a significant part of credit appraisals and the banks do enjoy freedom to adopt their own methods and procedures for credit rating.

8. In para 6 of the affidavit-in-reply, the respondent bank has stated that taking into consideration various parameters and credit policies of the bank in conformity with RBI guidelines, the Bank has to take prudent banking decision after applying necessary parameters and observing the operation of account being maintained by the borrower and as per H.O./RBI guidelines, the Bank has upgraded credit rating of the appellants'' account from P-III to P-II-B with effect from 1.3.1997 and thereafter from P-II B to P-II A with effect from 1.1.2000. Mr. Jani for the respondent bank has, therefore, submitted that the respondent bank has acted in conformity with the RBI guidelines and, therefore, the appeal deserves to be dismissed. It is further submitted that in any view of the matter, it is neither for the Court nor for the Ombudsman to sit in appeal over the decision of the bank in assigning a particular credit rating to the borrower.

9. It is required to be noted that the above revision in credit rating for the period from 1.3.1997 was already pointed out by the Bank before the Ombudsman, but the dispute was for the period 1994-95 and 1995-96.

10. Having heard the learned Counsel for the parties, we are of the view that the Banking Ombudsman Scheme, 1995 under which the matter was examined by Ombudsman specifically provides in Chapter III, Clause 3(b)(i) that complaints concerning loans and advances only insofar as they relate to nonobservance of Reserve Bank directives on interest rates, can be looked into by the Ombudsman.

As per the RBI circular dated 18th Feb.,1997, the varying interest rates depend upon the credit rating of the borrower. Hence if the borrower makes a grievance that the bank has arbitrarily given poor credit rating to the borrower notwithstanding its excellent repayment record, the Ombudsman would at least be required to broadly examine whether the credit rating given by the bank to the borrower for the past period is within reasonable brackets or whether it is done arbitrarily. Of course, the Ombudsman is not required to look at the matter as if he himself were the banker and which credit rating he would have given to the borrower in a particular case. Nonetheless, the Ombudsman would have to broadly examine on the basis of repayment record as may be submitted by the bank and to consider whether the credit rating given by the bank to the complainant borrower can be said to be reasonable. If the Ombudsman finds that the credit rating given by the respondent bank to the complainant borrower is so arbitrary that no reasonable banker would give such a poor credit rating to the borrower, it cannot be said that the Ombudsman is without any power to give appropriate relief to the complainant. Since even for giving credit rating, the respondent bank relies on Reserve Bank directives as well as its Head Office circulars, the borrower''s grievances against poor credit rating can certainly form part of the complaint concerning loans and advances insofar as it relate to "nonobservance of Reserve Bank directives on interest rates", the reason being interest rates are inextricably linked with the credit rating of the customer.

The Court does certainly appreciate that the credit appraisal is an area in which banks do enjoy freedom to adopt their own methods and procedures, more particularly in the matter of examination of credit worthiness of the customer. When a potential borrower goes to a bank, it is in the exclusive domain of the bank to determine his credit worthiness- whether he should be given a loan of Rs. 1 lakh or Rs. 100 crores or not even a rupee, because such credit appraisal would involve assessment of the potential borrower''s intention, inclination, ability and capacity to repay the loan amount and also the assessment of various imponderables like product profile, market conditions, future projections and so on and so forth. such appraisal is more with reference to future events and uncertainties. In such matters, the bank management''s decision would be absolute and untrammeled.

The controversy in the instant case is not of the above nature. Once the bank decides to give loan to a customer, the interest rates would be governed by the RBI guidelines and directions. When it comes to examination of past record, (the grievance in the instant case being for the past period i.e. for 1994-95 and 1995-96), the Ombudsman can certainly look into the past record of the appellants as may be produced by the respondent bank and thereafter the Ombudsman can, after considering the RBI guidelines and directives on the subject, broadly examine whether the credit rating given to the appellants for the aforesaid period is reasonable or arbitrary and in case, if it is found to be arbitrary, the Ombudsman can give appropriate relief.

11. In view of the above discussion, the appeal deserves to be partly allowed with suitable directions to the Ombudsman in terms of the observations made herein above.

12. Accordingly, the appeal is allowed. The Banking Ombudsman is directed to reconsider, only for the years 1994-95 and 1995-96, the following issue:-

"Whether the bank did/ does not observe the guidelines/ directives of the Reserve Bank of India while undertaking the exercise of credit rating of the complainant for the purpose of ascertaining rate of interest on the Cash Credit Account ?"

on the basis of repayment record of the appellants and any other material which the Ombudsman may consider relevant and in light of the observations made in this judgment.

13. Since the Letters Patent Appeal is allowed to the above extent, Civil Application does not survive and is disposed of accordingly.