
(2003) 08 AHC CK 0073

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 17158 of 2003

Simco Rubber Product (P.) Ltd.

APPELLANT

Vs

Bank of India

RESPONDENT

Date of Decision : 26-08-2003

Acts Referred:

Citation : (2004) 51 SCL 272

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : Dilip Gupta, for the Appellant; Siddhartha, for the Respondent

Final Decision : Dismissed

Judgement

M. Katju, J.—This writ petition has been filed for a writ of certiorari to quash the impugned letter dated 8-3-2003. Annexure 3 to the writ petition issued by the respondent Bank of India. The petitioner has also prayed for a mandamus directing the respondent Bank to accept one time settlement offer of the petitioner as contained in the letter dated 4-3-2003, Annexure 2 to the writ petition.

2. Heard learned counsel for the parties.

3. The petitioner is a Private Limited Company registered under the Indian Companies Act and is having its factory at Sikandra Industrial Area, Agra. The petitioner took a loan from the respondent Bank whose sanctioned limit is Rs. 27 lacs as stated in paragraph 5 of the writ petition. It is alleged in paragraph 6 of the writ petition that the factory ran into financial difficulties soon after the production began because of the low demand in the market of the petitioners' product. Hence the petitioner could not achieve the expected profits and hence could not meet the interest liability on the loan.

It is alleged in paragraph 7 of the writ petition that the Reserve Bank of India framed guidelines dated 27-7-2000 for recovery of dues relating to Non

Performing Assets (hereinafter referred to as "NPA") of public sector Banks. These were revised on 29-1-2003 which has been quoted in paragraph 7 of the writ petition. True copy of the guidelines is Annexure 1 to the writ petition.

It is alleged in paragraph 11 of the writ petition that the cash credit facility falls under the category of NPA from 31-12-1997 upto 31-3-2000. The account became a doubtful asset since it remained NPA for a period exceeding two years on 31-3-2000 and hence it is alleged that a compromise settlement as stated in Clause (A)(i) as mentioned in the letter dated 29-3-2003 became applicable to the petitioner's case. It is alleged in para 12 that the petitioner became entitled to the one time settlement and hence it sent a letter dated 4-3-2003 to the Zonal Manager, S.B.I. Branch, Bank of India, Agra pointing out that the account falls under the NPA category as per the R.B.I. guidelines and the petitioner was ready to pay the outstanding dues as on the relevant date the account become doubtful. Photocopy of the letter dated 4-3-2003 is Annexure 2 to the writ petition. It is alleged in para 13 that instead of accepting the petitioner's offer the Chief Manager of the respondent Bank sent a letter dated 8-3-2003 informing the petitioner that its account does not fall under the R.B.I. guidelines for one time settlement vide Annexure 3 to the writ petition. It is alleged by the petitioner that the contention of the respondent Bank that the petitioner is not entitled to one time settlement is patently illegal. It is alleged in para 15 that the petitioner falls under the Doubtful Asset Classification and therefore was clearly entitled for one time settlement. It is alleged in paragraph 20 of the writ petition that no reason has been given in the letter dated 8-3-2003 as to why the petitioner's account does not fall under the R.B.I. guidelines for one time settlement, and only a bald statement has been made which is apparently against the record. It is alleged that the guidelines of the R.B.I. are statutory in nature and the respondent Bank is a nationalized Bank and hence it was obligatory on the part of the Bank to comply with the said guidelines.

4. A counter affidavit has been filed by the Chief Manager of the respondent No. 1 and we have perused the same. In paragraph 3 it is alleged that the petitioner is a wilful defaulter who is trying to get undue advantage of the R.B.I guidelines by getting a declaration that his account has been declared as NPA with retrospective effect so that he may get the benefit of one time settlement to which he is not entitled. It is alleged that in case the petitioner's claim is granted it will open a Pandora's box for unscrupulous borrowers who will seek declaration of their account as NPA as per the R.B.I. guidelines which is only directory in nature and has been framed for recovering money from the chronic N.P.A. and not for the purpose of borrowers who have wilfully defaulted in repayment of the loan and have diverted the funds to other business through other banks illegally. It is alleged that the Bank arbitrarily and for its own convenience transferred an account of Rs. 5.5 lacs from the cash credit (hypothecation) account on 18-3-1999 and termed it as Working Capital Demand Loan (W.C.D.L.). It is stated that the Bank did not transfer the amount from cash credit account to W.C.D.L. account but it was transferred for convenience of the petitioner

borrower on the assurance that he will repay the dues within a year after selling ancestral property. In order to help the petitioner the Bank converted over due position into W.C.D.L. and allowed the petitioner to repay the advance account of the proceeds or other sources not disclosed to the Bank. However the petitioner accepted the W.C.D.L. limits by executing the documents in security acknowledging the debts on 2-12-1999 and 31-1-2002 by executing the document vide Annexure C.A. 1.

In paragraph 7 of the counter affidavit it is stated that after the year 1999 the petitioner never produced the balance sheets nor informed the Bank about its financial difficulties and no request for rehabilitation, stock revival or inability to pay was ever received by the Bank till 4-3-2003 when all of a sudden the petitioner demanded accommodation under the one time settlement scheme. It is stated that the petitioner always kept on promising to repay the advances within a certain period without acquainting the Bank of its difficulties. Since the cash credit account is only an operative account the interest incurred on other accounts are replenished from the cash credit account. The petitioner made false averment that he deposited the sale proceeds with the Bank. In fact the petitioner was not operating the account with the respondent Bank and is having accounts with other Banks e.g. Canara Bank, State Bank of Bikaner and Jaipur and the petitioner has been siphoning the funds through other Bank operations. Photocopy of the balance sheets of the year 1999, 2000, 2001 of the petitioner which have subsequently been obtained by the Bank to prove siphoning of the funds and the accounts of the petitioner with the other Banks is Annexure C.A. II.

In paragraph 8 of the counter affidavit it is stated that the guidelines dated 27-7-2002 do not apply to the petitioner because Clause (A)(i)(a) and (b) of the guidelines provides that all non performing accounts which have become doubtful as on 31-3-2000 shall not be covered by the guidelines. The account of the petitioner borrower was neither classified in doubtful category nor under the loss making category on 31-3-2000, rather the petitioner continued to deposit certain amounts after 31-3-2000 and the Bank continued to receive deposits from the petitioner without any request and demand for settlement of account. Photocopies of the statements of accounts of the petitioner are Annexure C.A. III. The petitioner's case is not covered by Clause (A)(i)(a) and (c) which do not apply to the petitioner, rather Clause (A)(i)(d) of the guidelines applies to him because the petitioner has committed wilful default and malfeasance, since the sale proceeds of the petitioner are not being routed through the respondent Bank and it had chosen to divert the sale proceeds to the other Banks through marketing in the name and style of a partnership firm "Simco Products" and the sale proceeds are deposited in the other Banks. Thus the petitioner has committed wilful default in the repayment of its loan facilities. It is stated that the petitioner has manipulated and misquoted the position of its account by not showing the credit of its account. The account was prevented from becoming N.P.A. because the petitioner continued to deposit conditionally the amounts which has been adjusted by the respondent Bank on the interest side and

thereby the account of the petitioner was saved from becoming N.P.A. In paragraph 12 of the counter affidavit it is stated that the account of the petitioner was never fell in the N.P.A. category rather it remained under the watch category because the petitioner always deposited such amounts which saved the account from becoming a N.P.A. It is stated that the respondent Bank rightly rejected the request of the petitioner for one time settlement because his case was of wilful default and hence he cannot get benefit of the R.B.I. guidelines. None of the Auditors have recommended classification of the account of the petitioner as N.P.A, Moreover the assets of the petitioner company and of the guarantors are such as would enable the Bank to recover its dues.

5. After hearing the learned counsels for the parties we find no merit in this petition.

6. Before going into the merits of the controversy we may mention that no party has a legal right to get a one time settlement. We agree with the contention in paragraph 3 of the counter affidavit that the R.B.I. guidelines have been framed for recovering the money from chronic non-performing assets and it cannot be utilized as a handle by borrowers who have wilfully defaulted in repayment of loan and have diverted the funds to other businesses through other banks in violation of the contractual liabilities with the Bank.

7. As held by a Division Bench of this Court in *M.M. Accessories v. U.P. Financial Corporation* 2002 (46) ALR 261 (per G.P. Mathur, I), a settlement means a settlement or compromise between the two parties to which both have given their consent. Since the Bank has not given its consent to one time settlement the petitioner cannot insist on getting a one time settlement.

8. It may be clarified that a one time settlement, like an order granting facility of repaying the loan in instalments, really amounts to rescheduling the loan. In our opinion it is only the Bank or financial institution which has granted the loan which can reschedule the same. This Court cannot direct one time settlement because that would mean the Court directing rescheduling of a loan. This Court has already held in several decisions that the Court cannot direct repayment of bank loans in instalments as that would mean rescheduling of a loan.

9. A writ of certiorari lies when there is an error of law apparent on the face of the record. It does not lie only to get a direction for rescheduling of a loan by one time settlement or fixing instalments, even when there is no error of law.

Similarly, as held by this Court in *MM. Accessories*" case (supra) no mandamus can be issued directing one time settlement of a loan. The principles on which a writ of mandamus can be issued have been stated as under in "*The Law of Extraordinary Legal Remedies*" by F.G. Ferris and F.G. Ferris Jr. :

"Note 187 - Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within

the jurisdiction, requiring them to do some particular thing therein specified and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party apply for the writ is entitled of legal right to have performed.

Note 192 - Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute, mandamus lies as well for the enforcement of a common law duty.

Note 196 - Mandamus is not a writ of rights. Its issuance unquestionably lies in the sound judicial discretion of the court, subject always to the well settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and should, look to the larger, public interest which may be concerned - an interest which private litigants are apt to over look when striving for private ends. The court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

Note 206 - The correct rule is that mandamus will not lie where the duty is clearly discretionary and the party upon whom the duty rests has exercised his discretion reasonably and within his jurisdiction, that is, upon facts sufficient to support his action."

There very principles have been adopted in our country. In *The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others*, after referring to the earlier decisions in *Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others*, *Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College*, and *Dr. Umakant Saran Vs. State of Bihar and Others*, the Apex Court observed as follows :

"15. There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation, The chief function of a writ is to compel performance of public duties prescribed by statute and to keep

subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance... In the instant case, it has not been shown by respondent No. 1 that there is any statute or rule having the force of law which casts a duty on respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that respondent No. 1 was not entitled to apply for grant of a writ of mandamus under Article 226 of the Constitution and the High Court was not competent to issue the same." (p. 2154)

10. Therefore, there must be legal right with the party asking for a writ to compel the performance of some statutory duty cast upon the authorities. The petitioners have not been able to show that there is any statute or rule having the force of law which casts a duty on the UPFC to accept the proposal of one time settlement made by a borrower whereunder he has given his own terms. It is important to note that at the time when the loan was disbursed to the petitioner, a contract was entered into by them which provides for the rate of interest and mode and manner of payment. The amount of instalment and the date by which it had to be paid was also mentioned therein. The U.P.F.C. is not acting contrary to the terms of the contract which has been entered into between the parties. The State Financial Corporation Act, which governs the working of the U.P.F.C. does not contain any provision for entering into a one time settlement. A Court cannot issue any direction to a party to enter into a compromise or settlement. By the very nature of things a settlement involves consent and it is a voluntary act of the party.

11. In a matter where a creditor is enforcing its liability upon the debtor, the debtor has no legal right to claim that the claim be settled on favourable terms proposed by him whereby the claim of the creditor is reduced. Therefore, in our opinion, the prayer made by the petitioners that this Court should issue a writ of mandamus to the respondents to accept the proposal of one time settlement made by them cannot be granted as it does not come within the principles on which a writ of mandamus can be issued under Article 226 of the Constitution.

12. Broadly speaking, two options are open to the Financial Corporation if an industrial concern has defaulted in repayment of the loan. It may proceed u/s 29 or Section 31 of the Act which will invariably result in closure of the unit, or it may reschedule the loan or enter into a settlement on some favourable terms to the borrower. If some favourable settlement is entered into the industrial concern may continue with its activity and may be able to revive. Which particular course of action should be taken by the Financial Corporation, is entirely in its discretion depending upon a variety of factors. It is possible that it may think that the revival of an industrial concern may be in the larger public interest. By way of

example, if the industrial concern is employing a large work force, its closure may throw a large number of persons out of employment. The industrial concern may be situated in a backward area which the government wants to develop and its closure may have a serious adverse impact as it may deter other entrepreneurs in setting up industries in that area. It may be carrying on a business which is of public utility and its closure may adversely affect a large cross section of people. In these types of cases, the Financial Corporation, having regard to the public interest involved, may, in its discretion, enter into a settlement so that the industrial concern may not be closed and the production activity may go on. However, there may be cases where the nature of the activity of the industrial concern may not be of such a character and its closure may not have any adverse impact of any significance. The need to enter into a settlement may also depend upon the fact as to how best the money of the Financial Corporation can be retrieved. If the industrial concern has valuable land or building or machinery, its sale may give a sizeable amount. However, if the condition of the industrial unit is such that sale of its unit or hypothecated property may not give sufficient money, it may be prudent to enter into a settlement. The human element also cannot be ignored altogether. The unit may be substantially damaged on account of some natural calamity like earthquake, flood or fire or some calamity may fall upon the main person running the industrial concern like death or serious ailment. In such a situation the Financial Corporation, taking a humanitarian view, may in its discretion, enter into a settlement. These are matters to be examined and determined by the experts of the Financial Corporation as to what will be the ideal course to be adopted in a given case. The Courts have neither the expertise nor the knowledge to go into all these questions and then to examine why in one case the offer of one time settlement should be accepted and why in another case it should be refused. The exact idea of the nature and position of the industrial concern can never be fully ascertained by the affidavits filed by the parties. This will require an inspection of the spot, the assessment of the valuation of the land, building and machinery and a host of other factors. It is well nigh (sic) impossible for the Courts to enter into such kind of exercise in proceedings under Article 226 of the Constitution. It is also noteworthy that if a prayer is entertained on the part of a defaulting unit to compel or direct the Financial Corporation to enter into one time settlement on the terms proposed by it, then a profit making industrial concern which is capable of paying its dues as per the terms of the agreement entered into by it, would also like to get a one time settlement in its favour. Who would not like to get his liability reduced and pay less than what he is liable to pay under the contract executed by him ?

Apart from the above, on merits we find that petitioner has no case. It has been rightly pointed out in the counter affidavit that the petitioner was wilful defaulter who is trying to get undue advantage of R.B.I guidelines that his account be declared as NPA with retrospective effect so that he may get the benefit of one time settlement. Writ jurisdiction is discretionary jurisdiction and we are not

inclined to exercise our discretion in favour of a person like the petitioner who has not come to Court with clean hands. The details of how the petitioners have been committing irregularities and has been siphoning the funds have been stated in paragraphs 6, 7 and 8 of the counter affidavit, which have already been referred to above, and hence the said averments need not be repeated. We see no reason to disbelieve these averments. The petitioner's mala fides is clearly established in those averments, which we have no reasons to disbelieve.

13. The RBI guidelines are not meant for wilful defaulters like the petitioner who has deliberately defaulted in repayment of loan and has diverted the funds to other businesses through other banks in violation of the contractual liability with the respondent Bank. The RBI guidelines vide Clause (A)(i)(a)(c) excludes wilful defaulter like the petitioner. We are satisfied that the petitioner is wrongly trying to get itself classified as NPA. This cannot be allowed otherwise unscrupulous borrowers will take similar benefit to get this N.P.A. The petitioner has manipulated and misquoted the position of its accounts by not showing credit side of the account which kept on upgrading the status of the account and it never became a loss making, substandard and doubtful asset. As stated in the counter affidavit, the petitioner has continued to deposit the amount, which has saved the account from becoming substandard and his interest liability is cleared.

14. There is no force in the writ petition and it is dismissed.