
(2009) 04 RAJ CK 0102
In the Rajasthan High Court

Sohani Devi Lodha (Smt.)	Vs	APPELLANT
State Bank of India and Others		RESPONDENT

Date of Decision : 13-04-2009

Acts Referred:

Citation : (2009) 3 WLN 234

Hon'ble Judges : Vineet Kothari, J;Prakash Tatia, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Prakash Tatia, J.—Heard learned Counsel for the parties.

2. The appellant is aggrieved against the judgment dt. 19.12.2008 passed by the learned Single Judge by which the learned Single Judge was of the view that the petitioner's case is not covered under the scheme (Annex.3) issued in pursuance of the RBI circular dt. 03.09.2005 to give benefits of one time settlement to the small and medium enterprises accounts holders. The learned Single Bench has observed that petitioner's case is not covered under the scheme because the scheme was issued subsequently by the RBI and subsequent to passing of the judgment and decree against the petitioner by the civil Court.

3. According to learned Counsel for the appellant the appellant to take benefit under the scheme (Annex.3) applied before the respondent-bank by moving application (Annex.1) wherein the petitioner very clearly stated that the loan was taken and a recovery suit was filed by the respondent-bank and in that suit the decree was passed against the petitioner for Rs. 6,61,550.89 paisa by the Court of District Judge, Pali and she is prepared to fulfill all conditions of the scheme and tendered a cheque of Rs. 1,25,000/-. The application is dt. 08.02.2006. The petitioner's said application was rejected by the respondent bank vide communication dt. 22.07.2006. The only ground given for rejection of the petitioner's proposal was that since the civil Court has passed the decree in favour of the bank, therefore, she is not eligible to be considered under the said

scheme.

4. Learned Counsel pointed out that the policy clearly provides even adjustment of the amount against the decree by making specific provision under Sub-clause (3) of Clause 3.4 and the Sub-clause (5) under Clause 3.4 has been misconstrued by the learned Single Judge.

5. Learned Counsel for the respondent submitted that scheme was for limited period and that period has already expired. It is also submitted that the petitioner applied after the expiry of period and, therefore, her application was rightly rejected. It is also submitted that after passing of the decree, the benefit of scheme is not available to the persons who already suffered the decree. Learned Counsel for the respondent relied upon the judgment of the Punjab & Haryana High Court delivered in the case of Knittex Overseas Pvt. Ltd. Vs. State Bank of Patiala and Others, , wherein it has been held that the one time settlement scheme issued by the RBI is having no statutory force and such scheme do not confer any statutory right on borrower to seek their enforcement by issuance of writ of mandamus nor it create corresponding legal duty on financial institution. Same view was taken by the Division Bench of the Punjab and Haryana High Court in the case delivered in Bharat Bhushan v. Bharat Bhushan Vs. State Bank of India and Another,

6. We considered the submissions of learned Counsel for the parties and perused the scheme as well as the impugned order. The scheme for one time settlement was formed in pursuance of the RBI's circular dt. 03.09.2005. As per this scheme, the scheme is applicable to all those accounts which are declared as non-performing Assets (NPA) of Public Sector Banks. The outer limit of the account is Rs. 10.00 crores for Small and Medium Enterprises (SME). The applicants could have moved application for getting the benefit upto 31.03.2006. It is also provided that the proceedings under the revised guideline should be completed by 31.06.2006. The Sub-clause (b) of Clause (2) provides that guideline also cover NPAs classified as sub-standard as on 31.03.2004, which have subsequently become doubtful or loss will also be covered.

7. Sub-clause (3) of Clause 3.4 is as under:

...After repayment of the settlement amount as per the scheme, the suit(s) pending in the Court/decreed(s) awarded/Recovery Certificate Account(s) will be treated as satisfied and necessary steps will be taken for closure of cases in Courts/tehsil authorities.

The another relevant Clause is Sub-clause 3.5 Clause 3.4 which is as under:

...In case of suit filed/decreed accounts below DRT/Courts, consent decree shall be obtained for the claim/suit amount alongwith cost and pendente lite and future interest as claimed in the plaint/claim, with the stipulation that if the opposite party/respondents repay the settlement amount with or without interest as agreed under the settlement approved by the Competent Authority, the entire

debt shall be deemed to have been satisfied.

8. A bare reading of the above provisions clearly shows that all payments of the settlement amount determined as per the scheme are required to be adjusted against the due amounts of loan and on payment of settlement amount, the entire amount may it be amount in decree or award passed by any authority or against the recovery certificate also issued against the borrower shall stand satisfied. The Sub-clause (5) also though not happily worded, but clearly referred to the decree also passed by using the word "decreed" as it refers to settlement under the scheme on payment of settlement amount where Court has passed the decree or tribunal has passed the award or any authority has issued recovery certificate but yet say that in that situation consent decree will be obtained. Once decree or award is passed it can be satisfied by payment or discharge of liability but cannot be modified because of subsequent settlement between the parties. Therefore, the Clauses unambiguously show that any amount, which is declared to be NPA and become doubtful or loss as on 31.03.2005 can be a good case for consideration on fulfillment of the other conditions by the borrower for getting the benefit under the scheme.

9. We are of the view that once the benefit is given by an scheme, the benefit can be given to only those persons who are eligible and found suitable for the benefit by the bank after consideration of all the facts of the case. The Punjab and Haryana High Court in the judgment referred above clearly observed that this is not a case where straightway direction can be issued of giving benefit to the borrower and this discretion vest in the authority who can grant the benefit of the scheme to the eligible and suitable applicants. But so far as rejection of the claim of the petitioner only on the ground that since decree has been passed against the borrower by the civil Court, therefore, the borrower is not eligible, is absolutely contrary to the provisions of the scheme, which clearly provides that amount which is paid under the scheme shall be adjusted against the decree and to give effect to the benefit of the scheme, the decree shall stand satisfied on payment of the amount of one time settlement. The case of the petitioner has not been decided by the respondent on merits, which required to be decided by the competent authority afresh. So far as contention of learned Counsel for the respondent that petitioner applied after expiry of the period of limitation for filing the claim petition before the bank is concerned, that appears to be factually wrong. The Sub-clause (e) of Clause 2 very clearly provides that the last date for receipt of applications from borrowers would be as at the close of business on 31.03.2006 and the petitioner-appellant submitted her proposal on 08.02.2006. Therefore, her application was within time. Once the application is submitted then it is the duty of the respondent to decide the application of the applicant and even if it has not been decided by 31.06.2006 as provided under Sub-clause (e) of Clause 2 of the scheme even then that application cannot become infructuous merely by expiry of the period referred in Sub-clause (e) of Clause 2.

10. In view of the above reasons, we are not inclined to subscribe the view

expressed by the learned Single Judge in the impugned order that since the Reserved Bank issued the guideline and the scheme after passing of the decree by the civil Court itself is sufficient ground for holding the petitioner borrower ineligible under the scheme.

11. Hence, the appeal of the appellant is allowed. The impugned order passed by the learned Single Judge dt. 19.09.2008 as well as the order rejecting the petitioner's application dt. 22.07.2006 (Annex.6) are quashed. The respondent-bank may consider the petitioner's proposal on merits within three months in accordance with the guidelines referred above.