(2014) 12 GUJ CK 0052

In the Gujarat High Court

Case No : Special Civil Application No. 17018 of 2014

Vishal Malleables Ltd. APPELLANT

Vs

Reserve Bank of India RESPONDENT

Date of Decision : 08-12-2014

Acts Referred:
Constitution of India, 1950 — Article 19[1)[g)

Citation : (2014) 12 GUJ CK 0052

Hon'ble Judges : V.M. Sahai, Acting C.J.;R.P. Dholaria, J

Bench : Division Bench

Advocate : Masoom K. Shah, Advocate for the Appellant; Biju A. Nair and Y.H. Motiramani, Advocate for the Respondent

Judgement

V.M. Sahai, Actg. C.J.

1. Today, rejoinder-in-affidavit is filed by the learned counsel for the petitioner which is taken on record.

2. This petition has been filed by the petitioner challenging the vires of Reserve Bank of India''s Circular No. RBI/2004/200DBOD. No. Leg:BC.84/09.07.005/2003-04 dated 15th May, 2004 as well as Circular of Reserve Bank of India/2004-05/99DBOD. No. Leg.BC.22/09.07.005/2004-2005 dated 4th August, 2004 issued by the Chief General Manager in Charge of the Reserve Bank of India as ultra vires the Constitution of India, 1950 and/or Banking Regulation Act, 1949 and/or Reserve Bank of India Act, 1934 and/or Securitisation & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [to be referred to as "the Securitisation Act" hereafter]. Further relief has been prayed to declare that the Circular No. RBI/2004/200DBOD. No. Leg:BC.84/09.07.005/2003-04 dated 15th May, 2004 issued by the Reserve Bank of India does not permit freezing of the account of the account holder with his bank in a case where he has obtained credit facilities from another lending bank and has not obtained No Objection Certificate from that lending bank. It is also prayed to declare that the Circular of the Reserve

Bank of India being Reserve Bank of India/2004-05/99 DBOD. No. Leg.BC.22/09.07.005/2004-2005 dated 4th August 2004 issued by the Chief General Manager-in-Charge of the Reserve Bank of India does not permit freezing and closing of the account of the account holder with his bank in case where he has obtained credit facilities from another lending bank and has not obtained a No Objection Certificate from that lending bank. It is further prayed to quash and set aside the impugned communication dated 18.11.2014 issued by respondent No. 2 Bank being contrary to the guidelines dated 15th May, 2004 issued by the respondent No. 1 and as illegal, arbitrary and violative of the fundamental rights of the petitioner as enshrined in Part III of the Constitution of India, 1950.

3. We have heard Mr. Vishwas Shah for Mr. Masoom Shah, learned counsel appearing for the petitioner, Mr. Y.H. Motiramani as well as Mr. Biju A Nair, learned counsel for respondent No. 3.

4. Mr. Vishwas Shah, learned counsel appearing for Mr. Masoom Shah for the petitioner has vehemently urged that the Circular issued by the Reserve Bank of India being RBC/2004/200DBOD. No. Leg:BC.84/09.07.005/2003-04, dated 15th May, 2004 is ultra vires as on the instructions of another bank, that is, respondent No. 3, the respondent No. 2 cannot freeze the current account of the petitioner. We have carefully gone through the above Circular dated 15th May, 2004 which refers to Circular DBOD. No. BC.136/09.08.001/99-2000 dated 25th January, 2000, wherein, guidelines are provided to the banks that at the time of opening of current accounts, the banks should insist on a declaration from the account holder to the effect that he is not enjoying any credit facility with any other bank or obtain a declaration giving particulars of credit facilities enjoyed by the intending customer with any other bank. Here in this case, the petitioner, at the time of opening the current account with the respondent No. 2 bank had not declared that it is enjoying credit facility with the respondent No. 3 bank. The above Circular clearly states that current account should not be opened where the account holder enjoys credit facilities from another bank. Thus, it appears that the petitioner while opening the current account with the respondent No. 2 bank had not declared the fact of the credit facility being enjoyed by it from the respondent No. 3 bank. This fact was in fact, required to be declared by the petitioner before the respondent No. 2 while opening the current account. In view of the above, we do not find that above Circular violates any of the constitutional provisions. On the contrary, it shows fair banking system.

5. Learned counsel for the petitioner further urged that the above Circular dated 15th May, 2004 is violative of Article 19[1][g] of the Constitution of India as the right of the petitioner to carry out business is affected. He has urged that even if the petitioner is a defaulter of another bank in connection with which recovery proceedings have been initiated by the said bank against the petitioner under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ["Debt Recovery Act" for short] as well as under the Secularization Act, it is always open

to the petitioner to open current account in another bank without disclosing the fact of it availing credit facility in the respondent No. 3 bank. It is submitted that it is the fundamental right of the petitioner to open current account in any bank and therefore, the above Circular restricting the opening of current account without disclosing the fact that the account holder is enjoying credit facility in another bank is ultra vires. Prima facie, we are not in agreement with the averment of learned counsel for the petitioner and the said Circular is not ultra vires the constitutional provision.

6. Learned counsel for the petitioner has further urged that the Chief General Manager-in-Charge of the Reserve Bank of India, who has issued letter dated 15th May, 2004 was not authorized to issue such letter. We are of the opinion that in view of the Circular DBOD. No. BC.136/09.08.001/99-2000 dated 25th January, 2000, only a letter dated 15th May, 2004 is issued by the Reserve Bank of India to follow the said Circular. It appears that the said Circular dated 25th January, 2000 has not been annexed along with this petition. Thus, the argument of the learned counsel for the petitioner cannot be accepted that the Chief General Manager of Reserve Bank of India had no authority to issue such letter. For the aforesaid reason, we do not find any merit in the argument of the learned counsel for the petitioner that the letter issued by the Chief General Manager-in-Charge has violated any constitutional provision.

7. Learned counsel for the petitioner placed reliance upon the judgment of the Karnataka High Court in the case of Mohammed Ameenulla v. Syndicate Bank & Ors reported in 2002 Company Cases Vol. 112 272. We do not dispute the proposition of law laid down in the said judgment. The said judgment considered the guidelines issued by the Chief General Manager dated 27th May, 1999. This case is based on the Circular issued in the year 2000. Therefore, this case does not have any direct effect on the letter/Circular challenged in this petition which is based on the Circular dated 25th January, 2000 issued by the Reserve Bank of India, which is not placed on the record.

8. So far as the merit of the case is concerned, we do not find any illegality in the action of the respondent No. 3-Bank of Baroda asking the respondent No. 2-Axis Bank to freeze the account of the petitioner which is opened by the petitioner without disclosing the fact that it is enjoying credit facility from the respondent No. 3 bank and for recovery of its dues of about Rs. 40.00 Crores, the respondent No. 3 bank has initiated recovery proceeding against the petitioner as stated by Mr. B.N. Nair, learned advocate, appearing on behalf of the respondent No. 3.

9. Learned counsel for the petitioner further urged that before freezing the account of the petitioner, the respondent No. 3 was required to follow the principles of natural justice. Having heard the learned counsel for the petitioner, we are of the opinion that the principles of natural justice would not apply in this case because in this case, without disclosing the fact of credit facility being availed by the petitioner from respondent No. 3, the petitioner had opened

current account in the respondent No. 2 bank and thus, the respondent No. 2 was authorized to freeze the current account of the petitioner.

10. It is further urged by the learned counsel for the petitioner that even if the petitioner has not followed the instructions contained in the letter dated 15th May, 2004 written by the Chief General Manager-in-Charge, even then the respondent No. 2 could not freeze its account pursuant to letter of the respondent No. 3. We are of the considered opinion that such contention cannot be accepted as the said letter dated 15th May, 2004 is refers to the Circular dated 25th January, 2000 wherein clear guidelines are given for opening of current accounts in the banks.

11. For the foregoing reasons, we do not find any merit in this petition and the same is dismissed. No order as to costs.