

(2011) 01 P&H CK 0441

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 4888 of 2006 (O and M)

Geeta Sharma

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision: Jan. 19, 2011

Acts Referred:

- Banking Regulation Act, 1949 - Section 46(4)

Citation: (2011) 162 PLR 373

Hon'ble Judges: Ranjit Singh, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Ranjit Singh, J.

The Petitioner has filed this writ petition seeking direction for the Respondent-Bank to accept the proposal of one time settlement on the basis of policy issued by Reserve Bank of India and annexed with the petition as Annexure P-2. The Petitioner had sent the application, Annexure P-1, which was rejected by the Respondent-Bank on 20.3.2006, which the Petitioner has impugned before this Court through the present writ petition.

2. When this writ petition initially came up for hearing before Division Bench of this Court, the same was dismissed alongwith some other writ petitions as common question of law had been raised in all such petitions. The Division Bench of this Court had considered the issue whether a writ of mandamus could be issued, commanding the Respondent to settle the dues of the Petitioner in accordance with one time settlement scheme. The Court found that the scheme under consideration did not have any statutory flavour nor had any statutory route. It was, thus, held that the scheme did not create any legal right with corresponding duties with the parties, warranting issuance of direction by the Court in the nature of mandamus. This writ petition alongwith various other writ petition was accordingly dismissed on

5.11.2007.

3. The Petitioner had accordingly impugned this order by filing SLP and the Hon'ble Supreme Court was pleased to grant the leave and ultimately allowed the appeal and set aside the order passed by the Division Bench of this Court. The order passed by the Hon'ble Supreme Court reads as under:

Leave granted. All the Petitioners have availed loan from the Respondent Financial Corporation and wanted one time settlement, based on the Reserve Bank of India guidelines/policy. The High Court passed an order dismissing the writ petition on the ground that Reserve Bank of India guidelines are not enforceable under law.

Learned Counsel for the Petitioners point out that this Court in Sardar Associates and Others Vs. Punjab and Sind Bank and Others, held that the broad policy decisions contained in the guidelines were required to be followed, the power of the Board of Directors to make division in terms of Clause 4 thereof would only be in relation to some minor matters which does not touch the broad aspects of the policy decision and in particular the one governing the non-discriminatory treatment. In view of the decision rendered by this Court, we feel that the matters require fresh look by the High Court and, therefore, we remit all these cases to the High Court of Punjab and Haryana for considering afresh in accordance with law. The appeals are disposed of accordingly. Parties are at liberty to raise their respective pleas.

4. The case was accordingly remanded back to the High Court and so the present writ petition has now come up for hearing before this Court.

5. The precise submission made by the counsel for the Petitioner now is that RBI Guidelines issued on 3.9.2005 were notified, regulating the one time settlement and M/s Ganga Sahay Rolling Mills had accordingly approached the Respondent-Bank, giving them an offer of one time settlement (OTS), as per this policy. The said concern had offered to pay the amount as quantified by the Respondent-Bank in terms of the RBI Guidelines. The Petitioner had made an offer to pay the complete amount within 60 days from the date of acceptance in accordance with RBI Guidelines.

6. It is stated that the one time settlement Scheme of the Reserve Bank of India is to provide non-discriminatory and non-discretionary mechanism for settlements and payment by defaulters in order to get speedy recovery of the amounts from the defaulters. These guidelines covers all Non Performing Assets (NP As) classified as sub-standards NP As as on 31.3.2004. As per the Petitioner, her case was squarely covered under the said Scheme and the proposal was accordingly submitted as per the settlement formula.

7. The Petitioner had also filed a writ petition No. 17246 of 2005 before this Court, which was disposed of with the directions that the representation made by the

Petitioner with the Bank shall be considered expeditiously on its merit. The Petitioner thereafter had made another representation to the Bank to accept the amount of Rs. 17,65,091/- as one time settlement according to RBI Guidelines. When the RBI Guidelines were about to expire on 14.3.2006, the Petitioner gave final notice to the Respondent-Bank to settle the account. The Bank in turn, however, sent reply on 20.3.2006, declining to accept the proposal on the ground that it was a case of willful default and a decree case and, thus, not covered under the guidelines. The Petitioner contends that this stand was totally contrary to the offer made by the Bank itself earlier through Annexure P-3.

8. A perusal of Annexure P-3 would show that Respondent-Bank itself had written to the Petitioner on 13.3.2001, making a one time offer to settle the account and asking her to avail the same upto 31.3.2001. The amount payable was subject to the conditions that settlement should be before 31.3.2001 and the minimum amount to be paid was Rs. 17,65,081.03P. The counsel for the Petitioner is justified in pointing out that the decree in favour of the Bank was in the year 2000 and hence, the reason now advanced not to accept the proposal to accept the one time settlement on the ground that it is a decree case, is totally unjustified.

9. The counsel for the Petitioner would rather refer to letter dated 26.12.2005 to say that only ground advanced in this regard was that the captioned account was willful defaulter and, thus, the said account did not come within the eligibility norms for acceptance of proposal, as per the RBI Guidelines regarding One Time Settlement Scheme. No doubt, subsequently the Respondent-Bank had issued another letter on 20.3.2006 to reject the one time settlement on the ground that it is a case of willful default and a decree case but the aspect of decree was never invoked in an earlier communication referred to above, when the Bank itself had proposed to settle the account under One Time Settlement Scheme.

10. Initially, a Scheme was issued by the RBI for settlement of accounts in the year 2001. On 3.9.2005, another guidelines for one time settlement scheme were issued. Once these guidelines have been held to be having a statutory flavour, the Bank could not have refused to consider the request of the Petitioner and could reject the same on some valid ground.

11. In any case, the request of the Petitioner was not declined on the ground that the guidelines are not having statutory flavour or statutory route. The request of the Petitioner was declined on the ground that it is a case of willful default and that it is a decree case and hence, not covered by the guidelines. As per the guidelines dated 3.9.2005 (Annexure P-2), the cases of willful default, fraud and malfeasance are not covered by the guidelines. It has not been pointed out before me in any appropriate manner as to how the case of the Petitioner can be termed as a case of willful default. It can be said that non-payment of loan in majority of the cases may be termed as willful default cases and the benefit of the policy guidelines declined. The Petitioner had voluntarily come forward to make an offer for one time settlement by

discharging the liability as per the guidelines, which was rejected, primarily on the ground that it is a case of willful default, though with an additional reason that it is a decree case. The Bank is not justified in pressing the ground on the basis of a decree as Bank had earlier itself made an offer for one time settlement for the Petitioner, ignoring the same decree, which is of the year 2000. Ultimately, aim is recovery of loan amount which may have gone bad and if the Petitioner had a right to invoke and get the benefit of the Scheme of one time settlement, the same can not be denied to him. As held in [Sardar Associates and Others Vs. Punjab and Sind Bank and Others,](#), the RBI Directives have not only statutory flavour, any contravention thereof or any default in compliance therewith is punishable under Sub-Section 4 of Section 46 of the Banking Regulation Act, 1949. This was the dicta in the case of [Central Bank of India Vs. Ravindra and Others,](#).

12. The Petitioner had promptly approached this Court, when his request for one time settlement was declined. This Court declined to interfere on the grounds, which are not found valid. Thus, the right of the Petitioner to be considered in the light of the guidelines issued by the RBI is clearly made out. The case of the Petitioner has not been considered on valid grounds and rejection thereof, as disclosed in the impugned order, is not justified on account of the detailed reasons noticed above. The counsel appearing for the Bank, while opposing the prayer made in the writ petition, has submitted that the Petitioner can approach the Bank and still his case can be finalized on some agreed terms. If that is so, then the One Time Settlement could very well be considered.

13. The order, Annexure P-7, is accordingly quashed. A direction is hereby issued to the Respondent-Bank to consider the application of the Petitioner in the light of RBI Guidelines dated 3.9.2005 for one time settlement of his loan account.

The writ petition is accordingly allowed.