

(2013) 10 DEL CK 0208

Delhi High Court

Case No: Writ Petition (C) 1161 of 2010

Fortuna Foundation and
Engineers and Consultants Pvt.
Ltd.

APPELLANT

Vs

RBI and Another

RESPONDENT

Date of Decision: Oct. 28, 2013

Acts Referred:

- Reserve Bank of India Act, 1934 - Section 45K, 45L

Hon'ble Judges: V.K. Jain, J

Bench: Single Bench

Advocate: Vivek Madhok, for the Appellant; Ramesh Babu, Ms. Swati Setia and Mr. Srinjoy Banerjee for Respondent No. 1, Mr. Tanmaya Mehta and Mr. Arnav Kumar, for the Respondent

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

V.K. Jain, J.

The petitioner before this Court took a loan of Rs. 175 lakhs from respondent No. 2-India Bulls Financial Services Limited on 10.05.2008. With effect from 01.07.2008, respondent No. 2 increased its Prime Lending Rate (PLR) by 1.5% though the other banks/financial companies have stated to have increased their PLR by 0.5%. As a result, the rate at which interest was payable by the petitioner to respondent No. 2 increased to 18.5% per annum. The petitioner, therefore, opted for foreclosure of the said loan. While allowing foreclosure of the loan, respondent No. 2 charged a sum of Rs. 7,30,832.84/- from the petitioner towards foreclosure charges. The aforesaid amount was calculated at the rate of 4.41% of the loan amount. The petitioner made a complaint to respondent No. 1-Reserve Bank of India against respondent No. 2-India Bulls Financial Services, seeking its intervention in exercise of the powers conferred upon RBI u/s 45K of RBI Act. Instead of itself taking any

action on the complaint, the RBI forwarded the same to respondent No. 2 for redressal. While forwarding the complaint of the petitioner to respondent No. 2, RBI informed it that it had not laid down any maximum rate of interest on loans and advances provided by non-banking financial companies though it had advised the Board of Directors of such companies to formulate appropriate interest rules and procedures to determine the interest rates and other fee, etc. It was further stated that rate of interest and other fee on the loans provided by such companies are determined in accordance with agreement entered with mutual consent between the company and the borrower. Vide communication dated 30.10.2009, respondent No. 2 informed the petitioner that the loan availed by it was at a floating rate of interest linked with the Prime Lending Rate of the company and, therefore, change in PLR influences the rate of interest as per the terms and conditions of the loan agreement. It was further stated in the said communication that the terms and conditions of the loan, including foreclosure charges, were duly explained to it before execution of the loan documents which it had signed after duly understanding the same.

2. Being aggrieved from the aforesaid action of RBI, the petitioner is before this Court, seeking the following relief:-

(i) to issue a writ, order or direction in the nature of mandamus commanding respondent no. 1 to exercise his power u/s 45K of the Reserve Bank of India Act, 1934 as amended by the Reserve Bank of India (Amendment) Act, 2006 AND to fix the rate of interest, foreclosure charges and to make the terms and conditions with regard to loan as just, fair, proper and reasonable for non-banking financial companies including respondent no. 2 in the matter of the petitioner.

(ii) to quash impugned order dated 11.09.2009 passed by respondent No. 1 and to direct respondent no. 1 to pass reasoned order on the complaint dated 31 July 2009 of the petitioner.

(iii) to quash the order dated 30.10.2009 passed by respondent no. 2 and to direct respondent no. 2 to return the excessive foreclosure charges taken from the petitioner i.e. 7,30,832.84/- on the loan of Rs. 175 lakhs expeditiously.

(iv) to issue any other suitable order or direction which this Hon"ble Court may deem fit and proper in the circumstances of the case may deem fit and proper in the circumstances of the case may kindly be pleased to pass in favour of the petitioner and

(v) allow this petition with cost and special cost.

3. In its counter-affidavit, respondent No. 1-Reserve Bank of India has stated that in order to regulate the credit system of the country to its advantage and in exercise of the powers conferred upon it by Section 45L of the RBI Act, it had issued a circular dated 01.07.2009, prescribing the broad guidelines on fair practices that are to be

framed and approved by the Board of Directors of all the Non-Banking Financial Companies and that the power to issue directions u/s 45K of the Act cannot be issued in the matter of grant of loans by such companies. It is further stated in the counter-affidavit that RBI has not fixed any particular rate of interest and other terms and conditions for grant of loan and has left the same to the agreement between the parties.

4. Vide order dated 17.7.2012, this Court noticing the grievances of the petitioner and lack of jurisdiction with the Banking Ombudsman to deal with the complaint against Non-Banking Financial Companies observed that NBFCs are operating in an unregulated field. The Court took note of a communication dated 24.5.2007 sent by the RBI to all the NBFCs to frame appropriate internal guidelines in the matter of loans advanced by them and called upon the RBI to ascertain as to why if at all there had been no compliance of the said circular by respondent No. 2. It was further directed that if such guidelines are already framed the same may be placed on record.

5. In its additional affidavit, respondent No. 1-RBI has stated that pursuant to its circular dated 24.05.2007, respondent No. 2-company passed a Resolution dated 06.06.2007, adopting the policy on interest rates/charges, etc. and the said Resolution is in tune with the provisions of the aforesaid circular dated 24.05.2007, whereby such companies are advised to lay out appropriate internal principles and procedures to determine interest rates and processing and other charges. It is further stated in the additional affidavit that respondent No. 1 has been complying with the instructions contained in its circular dated 28.09.2006.

6. In its counter-affidavit, respondent No. 2 has stated that the complaint made by the petitioner against it has already been adjudicated by RBI, which has passed an order dated 11.09.2009 in this regard. It is further stated that respondent No. 2 had acted strictly in accordance with the terms and conditions settled between the parties and no fundamental, contractual or other right of the petitioner has been violated. It is further stated that the contract contains a clause giving it right to alter the rate of interest and in view of the aforesaid clause in the contract between the parties, the petitioner cannot make a complaint in this regard.

7. Vide its additional affidavit dated 21.9.2012 respondent No. 2 placed on record certain documents including the Fair Practices Code, intimation of the said Code to the RBI, copy of the minutes whereby revised policy on interest rates/charges, etc. was adopted by the said respondent, copy of the resolution dated 28.3.2012 adopting the revised Fair Practices Code, copy of the resolution dated 8.5.2012 approving and ratifying the revised and modified Fair Practices Code, copy of the letter informing the RBI about adoption of the said Code, as also the print outs from its website showing availability of the Fair Practices Code. The respondent No. 2 also placed on record a copy of the minutes of the meeting of the Board of Directors dated 6.6.2007 along with the draft policy on interest rate and other charges.

8. Section 45K of the Reserve Bank of India Act, 1934 on which reliance is placed by the petitioner applies only to the deposits received and not to the loans advanced by the Non-Banking Financial Companies.

Therefore, the reliance upon the said Section by the petitioner is wholly misplaced. It is Section 45L of the RBI Act, which empowers the RBI to call for information from financial institutions and give directions to them in relation to conduct of their business, which would include the loans advanced by such companies. To the extent it is relevant the aforesaid Section reads as under:

45L. Power of Bank to call for information from financial institutions and to give directions. -

(1) If the Bank is satisfied for the purpose of enabling it to regulate the credit system of the country to its advantage it is necessary so to do, it may-

(a) require financial institutions either generally or any group of financial institutions or financial institution in particular, to furnish to the Bank in such form, at such intervals and within such time, such statements, information or particulars relating to the business of such financial institutions or institution, as may be specified by the Bank by general or special order;

(b) give to such institutions either generally or to any such institution in particular, directions relating to the conduct of business by them or by it as financial institutions or institution.

(2) Without prejudice to the generality of the power vested in the Bank under clause (a) of sub-section (1), the statements, information or particulars to be furnished by a financial institution may relate to all or any of the following matters, namely, the paid-up capital, reserves or other liabilities, the investments whether in Government securities or otherwise, the persons to whom, and the purposes and periods for which, finance is provided and the terms and conditions, including the rates of interest, on which it is provided.

It would, thus, be seen that before issuing directions in terms of the said Section, the RBI needs to be satisfied that it is necessary to do so, for the purpose of regulating the credit system of the country, to its advantage. The directions can be general in nature given to all the financial institutions and they may also be issued to an individual financial institution. Therefore, if a complaint is received by the RBI against a financial institution, and on examination of the said complaint it is satisfied that it would be necessary, to enable it to regulate the credit system of the country to its advantage, to give directions to financial institutions is general or to a particular financial institution, in the matter of grant of loans, such directions can validly be issued by RBI to all the financial institutions or to the concerned financial institution, as the case may be. While regulating the credit system of the country to its advantage, the RBI cannot ignore the interests of the borrowers from

Non-Banking Financial Companies and if it is satisfied that a particular Non-Banking Financial Company, is charging interest at unreasonable rates or it is levying charges which are not called for or the extent of such charges are levied by the financial institution concerned is unreasonable, the RBI would be very much within its jurisdiction in issuing appropriate direction(s) to the financial institution concerned to modify its rate of interest or charges as the case may be. In a case where RBI finds that some charge being levied by the financial institution on its borrowers is wholly unjustified and uncalled for, it can direct such a financial institution to refrain from levying such charges. The RBI in exercise of its powers u/s 45L of the RBI Act, will also be justified in directing the financial institution concerned to refund the unreasonable interest and/or other charges, if any, recovered by it from its borrowers, provided the RBI is satisfied that issue of such a direction is necessary to regulate the credit system of the country to its advantage. For the purpose of enabling it to take appropriate decision in this regard the RBI can call for such information from a financial institution as is deemed necessary in this regard.

10. In the case before this Court, as would be evident from the letter dated 11.9.2009 written by the RBI to respondent No. 2, the complaint received from the petitioner was simply forwarded to respondent No. 2 for redressal of its grievance along with an intimation to the petitioner that the bank had not fixed any upper ceiling on the interest rates charged by Non-Banking Financial Companies and interest and other charges are settled by way of mutual agreement between the lender and the borrower. No attempt was made by the RBI to examine whether the rate of interest being charged and foreclosure charges, if any, being recovered by respondent No. 2, considering the interest rates and foreclosure charges being charged by other financial institutions, were unreasonable or not. Considering that there is no institution such as Banking Ombudsman to entertain complaints made against Non-Banking Financial Companies, the RBI, instead of simply forwarding the complaint of the petitioner to respondent No. 2 for redressal, ought to have examined it on merits to determine whether, considering the interest rate being charged from the borrowers and foreclosure charges being recovered by respondent No. 2 from them, the matter required interference by way of issue of directions u/s 45L of the RBI Act or not. No such exercise, however,

11. In the absence of an NBFC Ombudsman the RBI instead of endorsing the complaint to the NBFC against whom it is made, should call for requisite information from the NBFC concerned and then examine the complaint with a view to decide whether the complaint warrants exercise of powers u/s 45L of the RBI Act or not.

Though, such an exercise is likely to result in extra work for the RBI officials, it would be in public interest to bear this additional workload so as to address genuine complaints against NBFCs, so long as no other grievance redressal mechanism is available to the borrowers and depositors of NBFCs.

For the reasons stated hereinabove, the writ petition is disposed of with a direction to respondent No. 1/Reserve Bank of India to examine the complaint of the petitioner on merits and decide whether any direction in terms of Section 45L of the RBI Act is necessary or not. It goes without saying that if any direction in terms of Section 45L is found necessary, the RBI shall forthwith issue such directions to respondent No. 2. The decision on the complaint of the petitioner shall be taken within eight (8) weeks from today and conveyed to it within one (1) week thereafter.

The writ petition stands disposed of. No orders as to costs.