

(2011) 05 DEL CK 0354
Delhi High Court
Case No: Writ Petition (C) 2882 of 2011

Creation DOR Pvt.
Ltd. and Others

APPELLANT

Vs

S.I.D.B.I

RESPONDENT

Date of Decision: May 3, 2011

Acts Referred:

- Constitution of India, 1950 - Article 227

Hon'ble Judges: Sanjay Kishan Kaul, J; Rajiv Shakdher, J

Bench: Division Bench

Advocate: Akhil Sibal, Navpreet Ahluwalia, Brijesh Chowdhary and Varun Vaid, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

Rajiv Shakdher, J.

1. By virtue of this writ petition a challenge is laid to the order dated 18.03.2011 passed by the Debt Recovery Appellate Tribunal (hereinafter referred to as "DRAT"), whereby the judgment passed by the Debt Recovery Tribunal (hereinafter referred to as "DRT") dated 31.10.2001, directing issuance of a recovery certificate in the sum of Rs. 50,63,813/- against the Petitioners has been sustained. In addition the DRT awarded interest at the rate of 6% per annum on the decretal amount from the date of filing of the suit, i.e., 20.06.2000 till the date of recovery.

2. Mr Sibal, who appeared for the Petitioners before us, raised only one issue, which was, that the Petitioner's proposals for One Time Settlement (OTS) had been rejected by the Respondent on the sole ground that it was purportedly a "willful defaulter". It was Mr Sibal's contention that the Reserve Bank of India (in short "RBI") guidelines in that behalf are stipulated in its master circular dated 02.07.2009 (in short "master circular").

2.1 According to the learned Counsel the said circular broadly envisages a procedure which requires adherence to three basic steps: first, issuance of show cause notice. Second, seeking a response. And lastly, consideration of the matter by a designated committee of the concerned institution comprising officers of stipulated seniority.

2.2 Since the procedure laid down in the Master Circular was admittedly not adhered to, the impugned order had to be set aside. According to him non-adherence to provisions of the Master Circular had resulted in severe consequences; which had not only affected the instant case, but had also impacted the Petitioner's ability to garner credit in future. It was his submission that the action of the Respondent in declaring the Petitioners a willful defaulter entailed civil consequences, which could only be remedied by setting aside the impugned orders.

2.3. In support of the aforesaid contention, averments have been made in the writ petition to the effect that, the Petitioners had since 2001 filed six applications with the Respondent seeking an OTS under the RBI guidelines. It is averred that the Petitioners, however, was told for the first time only on 20.02.2006 that its case for OTS could not be processed since it was a willful defaulter.

2.4 To buttress his submission, the learned Counsel relied upon the following judgments:

Sudershan Overseas v. Reserve Bank of India, Subhiksha Trading Services v. Kotak Mahindra Services and Ruia Cotex Ltd v. Corporation Bank and Ors.

3. Before we proceed further, we may only note that there are averments made in the writ petition with regard to other aspects including the rate of interest, however, no arguments were pressed before us as regards any other issue, save and except what is noticed above.

4. In order to deal with the submissions made, we are of the view that certain broad facts require to be noticed. These being as follows:

4.1 It emerges from the record that the Petitioner had applied for a term loan in the sum of Rs. 75 lacs evidently for purchasing machines. The Petitioner, however, after obtaining sanction of the loan sought reduction of the term loan to the extent of the amount disbursed, that is, Rs. 35 lacs. What is, however, not disputed by the Petitioner, is that, even though financial assistance was extended for the purchase of new machines, it had acquired second hand/reconditioned machines. These facts emerge from the Respondent's letter dated 19.03.1997 and the subsequent correspondence exchanged by the Petitioner with the Respondent. Extracts from correspondence exchanged, are noted by the DRAT in paragraphs 25 to 28 of the impugned judgment.

4.2 In order to avoid prolixity, we may briefly note that a perusal of the said letters clearly indicates the following:

(i) the Petitioner had, as noticed above, asked for reduction of the term loan from Rs. 75 lacs to Rs. 35 lacs;

(ii) the Petitioner had purchased a second hand/reconditioned machinery from "unapproved sources" "without" permission of the Respondent; (See letter dated 11.08.1998 extracted in paragraph 26 of the impugned judgment)

(iii) though the Respondent had sought details with regard to utilization of funds including the amount disbursed, i.e., Rs. 35 lacs the Petitioners had not supplied the details. In this regard reference may be had to the letter dated 30.06.1997, as noted in paragraph 26 of the impugned judgment.

5. At this juncture, we would also like to note the Petitioners contention made both before the authorities below as well as before us that despite the existence of OTS guidelines issued by RBI, the Petitioner's settlement could not go through, due to the obdurate and unfair stand of the Respondent. It is averred that the Petitioners in this regard had filed six applications, none of which received the due attention of the DRAT.

5.1 We may, therefore, briefly note the observations of the DRAT with regard to these six applications that were evidently moved by the Petitioners herein. The observations of the DRAT with regard to six applications moved by the Petitioner are contained in paragraph 4, 5, 36 and 37 of the impugned judgment.

5.2 The upshot of the observations made by the DRAT is that while the first two applications dated 11.05.2001 and 15.05.2001 were not pressed, the other applications were heard alongwith the main matter (i.e., the OA) when arguments were reserved on 07.08.2001. The DRAT concludes in paragraph 37 that the contention of the Petitioners that these applications were not disposed of cannot be given credence to since the Petitioners neither brought this fact to the notice of the DRAT nor moved for review of its orders. We tend to agree with the reasoning of the DRAT.

5.3. Even if we were to accept the fact that repeated applications had been made by the Petitioners seeking an OTS, what has emerged from the record is that by a series of letters the Respondent conveyed to the Petitioner that it was not willing to arrive at an OTS of its dues, in view of the fact that, the Petitioner had failed to adhere to "financial discipline", had "willfully violated the terms and conditions of the loan agreement", and had committed "willful default", "fraud" and "malfeasance". In this connection, regard may be had to the Respondent's letters dated 09.05.2003, 20.02.2006 and 03.09.2010. The extracts from the said letters have been noted by the DRAT in paragraph 31 to 33 of the impugned judgment.

5.4 It cannot be disputed that under the revised guidelines for OTS dated 03.09.2005, (on which reliance was also placed by the Petitioners), the OTS scheme for SME accounts pertaining to NP As of public sector banks, is not available where

borrower has indulged in willful default, fraud and malfeasance. This is so stated in paragraph 2 of the aforementioned guideline. For the sake of convenience the same is extracted herein below:

2. The guidelines will not, however, cover cases of willful default, fraud and misfeasance. Banks shall identify cases of willful default, fraud and malfeasance and initiate prompt action. Accordingly, guidelines for one-time settlement of dues relating to NP As of public sector banks in SME sector are given below:

(Emphasis is ours)

5.5 This is precisely what the Respondent conveyed to the Petitioners in their letters dated 09.05.2003, 20.02.2006 and 03.09.2010. The Petitioner, however, has in our view latched on to the expression "willful default" and from thereon created a spectre of the applicability of Master Circular, which is issued by the RBI to deal specifically with "willful defaulters". The expression "willful default" is defined in Clause 2.1 of the Master Circular. As correctly noted by the DRAT, there is no mention whatsoever by the Respondent that it has taken any action against the Petitioners under the provisions of the Master Circular. Therefore, the DRAT, in our opinion correctly, noted in paragraph 25 of the impugned judgment that this was not the case set up by the Respondent. If that is so, then the entire argument made on behalf of the Petitioners, built on the edifice of the Master Circular should collapse. This, however, in our opinion did not preclude the Respondent from conveying to the Petitioners, which it did in so many words, that it had: breached financial discipline, violated the terms of the loan agreement and committed acts of fraud and misfeasance, disentitling them from seeking an OTS of its dues with the Respondent.

6. We had put to Mr Sibal whether the Petitioner disputed the findings of the impugned judgment with regard to: purchase of second hand/reconditioned machinery from "unapproved sources" and failure to supply details of funds disbursed. Mr Sibal did not rebut these findings.

6.1 The only contention of Mr Sibal was that, notwithstanding the said findings, the court should have applied the provisions of the Master Circular and, therefore, following the principles of natural justice encapsulated therein, remanded the matter to the DRT. We are afraid that we cannot countenance such a submission. As indicated above, the Master Circular did not come into play. Therefore, the Respondent was in our view free to reject the offer to arrive at an OTS with the Petitioner looking at its past conduct. The Respondent was entitled to seek an adjudication on merits, which it did before the DRT.

7. Before we conclude we may also deal with the judgments cited by Mr Sibal. The first judgment was passed by a Single Judge of this Court in the case of Sudershan Overseas (supra). The said judgment pertains to the challenge laid to the constitutional validity of the Master Circular. This aspect is not before us and hence

the judgment has no application whatsoever. The second judgment cited is in the case of Subhikhsha Trading Services (supra). The said judgment also has no applicability as this is a case where the Petitioner before the court had been declared as a willful defaulter in terms of a Master Circular. The order declaring the Petitioner as a willful defaulter was quashed on the ground that the Petitioner had not been furnished with relevant documents by the Grievance Redressal Committee in order to enable it to effectively defend its case. As noticed on the facts the judgment is distinguishable. The last judgment passed in the case of Ruia Cotex (supra). Once again this judgment has no applicability as this was a case where the bank had declared the Petitioner before the court as a willful defaulter in terms of the Master Circular. Even though the bank had filed an application before the DRT for recovery of its debts this fact was not disclosed in the application. On the Petitioner coming to know of this fact, it filed an application in the DRT seeking an injunction against being treated as a willful defaulter. The DRT allowed the said application. In the appeal the DRAT set aside the order of the DRT. Consequently, the matter reached the Calcutta High Court by way of a petition filed under Article 227 of the Constitution of India. As would be noticed, the facts of the case are not *pari materia* with those obtaining in the instant case. In the instant case the Respondent has not taken recourse to the Master Circular. Therefore, the judgment would have no applicability.

8. We may point out that we have expressed no view on any action that the bank may or may not take in terms of the Master Circular. During the course of argument Mr Sibal had submitted that the Petitioners had been declared willful defaulters in terms of the Master Circular. This was a submission made at the bar, there is no averment admittedly to this effect in the petition nor has any document been appended thereto. We make it clear that it would be open to the Petitioners to challenge such a declaration, if made by the Respondent in accordance with the law.

9. For the reasons given hereinabove we do not think that this is a case in which interference is called for in exercise of our power under Article 227 of the Constitution of India. The petition is thus dismissed.