SUPREME COURT OF INIDIA

Oriental Bank of Commerce

Vs.

Sunder Lal Jain.

C.A.No.2 of 2008

(G.P.Mathur and Aftab Alam,JJ.)

08.01.2008

JUDGMENT

G. P. Mathur, J.

1. Leave granted.

2. This appeal, by special leave, has been preferred against the judgment and order dated 17.8.2005 of Delhi High Court, by which a direction was issued to the appellant Oriental Bank of Commerce to declare the respondentsaccount as Non-Performing Asset (NPA) from 31st March, 2000 and to apply the Reserve Bank of India Guidelines to their case and communicate the out standings which shall be recoverable by quarterly installments over a period of two years.

3. The respondents Sunder Lal Jain & another were sanctioned credit facility for Rs.20 lakhs on 12.12.1996. The respondent defaulted in repayment of the amount and their account was declared as NPA on 31.3.2001. On 21.2.2002, the appellant Oriental Bank of Commerce filed a petition against the respondents being O.A. No.21 of 2002 before the Debt Recovery Tribunal-III, Delhi (for short the DRT). The DRT passed a decree in favor of the appellant for recovery of Rs.20,27,862/- along with interest on 14.11.2003. The appellant initiated execution proceedings for recovery of the amount from the respondents and a recovery certificate was issued on 8.12.2003. The respondents did not file any appeal challenging the decree passed by the DRT. Instead, the respondents filed WP(C) No.559 of 2005 and WP(C) No.560 of 2004 before Delhi High Court praying that a direction be issued to the appellant, Oriental Bank of Commerce, to declare their account as NPA from 31.3.2000 and apply RBI Guidelines for reconciliation and settling the accounts with them. The petitions were disposed of by a short order on 17.8.2005 which reads as under:-

> "The petitioners have a remedy available to them of filing an appeal against the recovery proceedings to the DRT which remedy has not been taken and for which this

petition is liable to be rejected. However, since this petition has been pending for quite some time before this Court and the first Respondent has agreed to consider declaring the account as NPA from 31st March, 2000, there is no impediment in disposing of this petition by the following order"

"a.) First Respondent-Bank is directed to declare the Petitioners account as NPA from 31st March, 2000 and apply the RBI guidelines to their case and then to communicate the out standings, which shall be recoverable by quarterly installments over a period of two years.

b) In case, this course works out and Petitioners after reconciling their accounts do not commit any default, the execution proceedings against them pending before the Recovery Officer shall be stayed and the recovery certificate passed against them shall stand cancelled. However, in case of default it shall be open to the first Respondent-Bank to activate the recovery proceedings against them. In that event, it shall be open to the Petitioners to take any appropriate remedy, which they may have against the recovery certificate or its execution in law. Feeling aggrieved by the above noted order, the appellant, Oriental Bank of Commerce, has preferred this appeal".

4. Learned counsel for the appellant has submitted that the bank had filed a suit for recovery of the amount and the same had been decreed on 14.11.2003 and thereafter a recovery certificate had also been issued on 8.12.2003 in the execution proceedings initiated by the appellant. The respondents did not file any appeal to challenge the decree passed by the DRT and, therefore, the same attained finality. In these circumstances, the writ petition filed by the respondents to declare their account as NPA from 31.3.2000 and to apply the RBI guidelines to their case was not at all maintainable and the order passed by the High Court is clearly erroneous in law. Learned counsel for the respondents has, on the other hand, tried to support the order passed by the High Court and has submitted that the same had been passed on consent of the parties and, therefore, it is not open to the appellant to challenge the same. Regarding the submission of learned counsel for the respondents that the order under:

"Challenge has been passed on consent of the parties, it may be noted that the High Court has recorded that the first respondent has agreed to consider declaring the account as NPA from 31st March, 2000. Learned counsel for the appellant bank has vehemently submitted that no consent had been given by the counsel for the bank to declare the account as NPA from 31st March, 2000, nor any such instructions had been given to the counsel by the appellant bank. That apart, the order of the High Court mentions has agreed to consider. It only means that the bank will examine and consider. Considermeans to look at closely and carefully; to think or deliberate on; to take into account. There was thus no consent on the part of the appellant bank to declare the account as NPA from 31st March, 2000. A statement by a counsel for a party that his client will consider a particular suggestion given by the other side would not amount to consent by the concerned party and an order passed on such a statement of the counsel cannot be said to be an order passed on consent. It is, therefore, not

possible to accept the contention raised by learned counsel for the respondents that the impugned order of the High Court has been passed on the consent of the appellant bank and consequently the present appeal is not maintainable. “

5. Before considering the submission made by learned counsel for the parties on merits of the case, it is necessary to take note of the essential features of the revised guidelines issued by the Reserve Bank of India on January 29, 2003 regarding Non-Performing Assets of public sector banks which read as under :-Revised guidelines for compromise settlement of chronic Non-Performing Assets (NPAs) of public sector banks Dbod.Bp.Bc.65/21.04.117/2002-2003 January 29, 2003 Chairman and Managing Directors of all Public Sector Banks.

Dear Sir,

Please refer to our circular DBOD.BP.BC.11/21.01.040/99-00 dated 27th July, 2000, setting out the guidelines for compromise settlements of chronic NPAs up to Rs.5.00 Crore.

2. A review of compromise settlements of NPAs through the above scheme has revealed that the progress of recovery of NPAs through this mechanism has been moderate. In consultation with Government of India, it has been decided to give one more opportunity to the borrowers to come forward for settlement of their outstanding dues. Hence fresh guidelines are now issued, which will provide a simplified, non-discretionary and non-discriminatory mechanism for compromise settlement of chronic NPAs below the prescribed value ceiling. All public sector banks should uniformly implement these guidelines, so that maximum realization of dues is achieved from the stock of NPAs within the stipulated time.

(A) Guidelines for compromise settlement of chronic NPAs up to Rs.10.00 crore

[i] Coverage

a) The revised guidelines will cover all NPAs in all sectors irrespective of the nature of business which have become doubtful or loss as on 31st March 2000 with outstanding balance of Rs.10.00 crore and below on the cutoff date.

b) The guidelines will also cover NPAs classified as sub-standard as on 31st March, 2000, which have subsequently become doubtful or loss.

c) These guidelines will cover cases on which the banks have initiated action under the Securitization and Reconstruction of Financial Asses and Enforcement of Security Interest Act, 2002 and also cases pending before Courts/DRTs/BIFR, subject to consent decree being obtained from the Courts/DRTs/BIFR.

d) Cases of willful default, fraud and malfeasance will not be covered.

e) The last date for receipt of applications from borrowers would be as at the close of business on 30th April, 2003. The processing under the revised guidelines should be completed by 31st October, 2003.

(ii) Settlement Formula amount and cutoff date

a) NPAs classified as Doubtful or Loss as on 31st March, 2000 The minimum amount that should be recovered under the revised guidelines in respect of compromise settlement of NPAs classified as doubtful or loss as on 31st March, 2000 would be 100% of the outstanding balance in the account as on the date of transfer to the protested bills account or the amount outstanding as on the date on which the account was categorized as doubtful NPAs, whichever happened earlier, as the case may be;

b) NPAs classified as sub-standard as on 31st March, 2000 which became doubtful or loss subsequently. The minimum amount that should be recovered in respect of NPAs classified as sub-standard as on 31st March, 2000 which became doubtful or loss subsequently would be 100% of the outstanding balance in the account as on the date of transfer to the protested bills account or the amount as on the date on which the account was categorized as doubtful NPAs, whichever happened earlier, as the case may be, plus interest at existing Prime Lending Rate from 1st April, 2000 till the date of final payment.

(iii) Payment the amount of settlement arrived at in both the above cases should preferably be paid in one lump sum. In cases where the borrowers are unable to pay the entire amount in one lump sum, at least 25% of the amount of settlement should be paid upfront and the balance amount of 75% should be recovered in installments within a period of one year together with interest at the existing Prime Lending Rate from the date of settlement up to the date of final payment.

6. A perusal of the aforesaid revised guidelines issued by the Reserve Bank of India on January 29, 2003 for compromise settlement of chronic Non-Performing Assets (NPAs) of public sector banks will show that the same will be applicable and will cover NPAs classified as sub-standard as on 31st March, 2000 which have subsequently become doubtful or loss. The revised guidelines have no application where the NPAs have not been classified as sub-standard as on 31st March, 2000. It is not in dispute that the account of the respondents was a performing account between 1.4.2000 and 31.3.2001. According to the records of the bank, the account was consigned to Protest Bill Account on 15.10.2001 and was declared as NPA as per prudential norms of RBI on 31.3.2001. The respondents contested the case before the DRT and did not admit their liability. No such plea was raised that their account had become NPA as on 31.3.2000 before DRT. Therefore, the revised guidelines issued by Reserve Bank of India on January 29, 2003 for compromise settlement of chronic Non-Performing Assets (NPAs) of public sector banks were not at all applicable to the facts and circumstances of the case and no direction could be issued to declare the respondents account as NPA from 31st March, 2000. The guidelines further provide that in case where borrowers are unable to pay the entire amount in lump sum, at least 25% of the amount of

settlement should be paid upfront and the balance amount of 75% should be recovered in installments within a period of one year together with interest. The High Court, in the impugned order, has directed that the amount should be recovered by the appellant bank in quarterly installments over a period of two years. This is again contrary to the revised guidelines, which provide a period of one year only for recovery of the entire amount.

7. It is important to note that the revised guidelines issued by the Reserve Bank of India on January 29, 2003 are only in the nature of internal guidelines for the banks and financial institutions. They are purely executive instructions and have no statutory force. They do not create any right in favor of the borrowers. In order to avail relief under the guidelines, the eligibility criteria must be strictly fulfilled and one of them is that the account must be an NPA as on 31st March, 2000. What the respondents want is that a writ of mandamus be issued commanding the appellant bank to declare the respondents account as NPA from 31st March, 2000 and apply the RBI Guidelines to their case whereby their liability towards the appellant bank will be considerably reduced by way of one time settlement.

8. The principles on which a writ of mandamus can be issued have been stated as under in The Law of Extraordinary Legal Remediesby F.G. Ferris and F.G. Ferris, Jr. Note 187-- Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duly to which the party applying for the writ is entitled of legal right to have performed. Note 192 --Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and Tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty Note 196-- Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the Court, subject always to the well-settled principles which have been established by the Courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and Judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the Court may, and should, look to the larger public interest which may be concerned - an interest which private litigants are apt to over-look when striving for private ends. The Court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case discretion dependent upon all the surrounding facts and circumstances. Note 206. The correct rule is that mandamus will not lie where the duty is clearly discretionary and the party

upon whom the duty rests has exercised his discretion reasonably and within his jurisdiction, that is, upon facts sufficient to support his action.

9. These very principles have been adopted in our country. In Bihar Eastern *Gangetic Fishermen Cooperative Society Ltd. v. Sipahi Singh and others*[1] after referring to the earlier decisions in *Lekhraj Satramdas Lalvani v. Deputy Custodian-cum-Managing Officer*[2] *Dr. Rai Shivendra Bahadur v. The Governing Body of the Nalanda College*[3] and *Dr. Umakant Saran v. State of Bihar*[4] this Court observed as follows in paragraph 15 of the reports:

> "There is abundant authority in favor of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of the officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate Tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. In the instant case, it has not been shown by respondent No. 1 that there is any statute or rule having the force of law which casts a duty on respondents 2 to 4 which they failed to perform. All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that respondent No. 1 was not entitled to apply for grant of a writ of mandamus under Article 226 of the Constitution and the High Court was not competent to issue the same."

10. Therefore, in order that a writ of mandamus may be issued, there must be a legal right with the party asking for the writ to compel the performance of some statutory duty cast upon the authorities. The respondents have not been able to show that there is any statute or rule having the force of law which casts a duty on the appellant bank to declare their account as NPA from 31st March, 2000 and apply R.B.I. guidelines to their case.

11. The High Court, therefore, erred in issuing a writ of mandamus directing the appellant bank to declare the respondentsaccount as NPA from 31st March, 2000 and to apply the RBI Guidelines to their case and communicate the out standings which shall be recoverable by quarterly installments over a period of two years. The later part of the order passed by the High Court wherein a direction has been issued to stay the recovery proceedings and the recovery certificate issued against the respondents has been cancelled is also wholly illegal as the decree passed by the DRT had attained finality and proceedings for execution of decree could not be stayed in an independent writ petition when the respondents had not chosen to assail the decree by filing an appeal, which is a statutory remedy provided under Section 20 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

12. In view of the discussions made above, the appeal is allowed and the impugned judgment and order dated 17.8.2005 passed by the High Court is set aside. The appellant will be entitled to its costs.

Cases Referred

[1]*AIR 1977 SC 2149*
[2]*AIR 1966 SC 0334*
[3]*AIR 1962 SC 1210*
[4]*AIR 1973 SC 0964*