

Mrs Poonam Wadhera And Ors vs Bank Of India on 6 November, 2020

Author: Rekha Palli

Bench: Rekha Palli

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 3156/2020 & CM APPL. 10966/2020

MRS POONAM WADHERA AND ORS. Petition
Through: Mr.Saurabh Kirpal, Ms. Neeha
Nagpal, Mr. Malak Bhatt, Mr. Vishvendra Toma
Advs.

versus

BANK OF INDIA
Through: Mr. Vipin Jain, Adv.

+ W.P.(C) 3325/2020 & CM APPL. 11680/2020

FROST INTERNATIONAL LTD & ORS. Petition
Through: Mr.Saurabh Kirpal, Ms. Neeha
Nagpal, Mr. Malak Bhatt, Mr. Vishvendra Tom
Advs.

versus

BANK OF INDIA
Through: Mr. Vipin Jain, Adv.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
ORDER

% 06.11.2020

1. The present petitions under Article 226 of the Constitution of India, assail the order dated 31.12.2019, passed by the respondent declaring the petitioners as wilful defaulters.

2. The primary contention raised by the learned counsel for the petitioners is that the said impugned order declaring the petitioners as wilful defaulters has been passed without providing them an opportunity to make a representation against the identification committee's report dated 19.11.2019, which requirement has been held to be mandatory as per the decision of the Supreme Court in State

Bank of India vs Jah Developers Pvt. Ltd. 2019 (6) SCC 787.

3. Upon notice being issued, a detailed counter affidavit has been filed, wherein the respondent has not disputed that the petitioners were not provided any opportunity to make a representation against the aforesaid report of the identification committee. Learned counsel for the respondent, however, vehemently submits that since process for declaring the petitioners as wilful defaulters has commenced before the pronouncement of the decision of the Supreme Court in State Bank of India (supra), there was no requirement for the respondent to furnish a copy of the said report to the petitioners. He further submits that the petitioners was otherwise granted adequate opportunity to show, as to why they should not be declared wilful defaulters.

4. On the last date, after the parties made their respective submissions, learned counsel for the respondent/bank was granted time to obtain instructions as to whether the respondent would be willing to take fresh steps against the petitioner after supplying them a copy of the report of the identification committee and granting them adequate opportunity to make representation against the same.

5. Today, learned counsel for the respondent submits that the respondent is not willing to adopt the said course of action because its consistent stand has been that the Bank was not obligated to follow the law as enunciated by the Hon'ble Supreme Court in State Bank of India (supra) as the process for declaring the petitioners as wilful defaulters had been initiated before the pronouncement of the aforesaid judgment.

6. In my view, the aforesaid stand of the respondent is wholly misconceived and cannot be accepted once the Supreme Court, after considering the RBI circular dated 1.07.2015, held that it was incumbent upon the respondent to follow the principles of natural justice and give opportunity to the persons proposed to be declared as defaulters to make a representation against the identification committee's report dated 19.11.2019, before declaring them as defaulters. In this regard, reference may also be made decision of this Court in M/s Rangoli International Private Limited Vs. Bank of India [WP (C) 6520/2019] wherein a Coordinate Bench of this Court while quashing a similar order had held as under:-

"5. The arguments advanced by the respondent bank and various other banks that there was no necessity to give any such opportunity to delinquent debtors prior to the judgment of the Supreme Court only deals with law as it always was. The judgment does not say that it would apply prospectively. The judgment only declares the law.

5. Mr. Karan Khanna, who appears for the respondent bank, cannot but accept that the Review Committee did not give any opportunity to the petitioner to make a representation. Mr. Khanna says that since the Identification Committee gave an opportunity to the petitioner, that would suffice. To my mind, that is an incorrect appreciation of law."

7. The writ petitions are, therefore, entitled to succeed. The impugned order dated 31.12.2019 is set aside. It is, however, made clear that the respondent would be at liberty to initiate fresh action against the petitioners on the same cause of action, after supplying them with a copy of identification committee's report dated 19.11.2019 and giving them 15 days' time to make a representation against the same. The Review Committee will give a personal hearing to the petitioners/authorised representatives before passing any final orders.

8. The petitions, along with pending applications, are accordingly allowed and disposed of in the aforesaid terms.

REKHA PALLI, J.

NOVEMBER 6, 2020 'sdp'