

OD 2

WP 206 of 2020
GA 838 of 2020

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SURESH KUMAR PATNI & ORS.
Versus
PUNJAB NATIONAL BANK & ANR.

BEFORE:
The Hon'ble JUSTICE ARINDAM MUKHERJEE
Date : 1st July, 2020.

APPEARANCE:
Mr. Sabyasachi Chowdhury, Sr. Adv.
Ms. Nikita Jhunhunwala, Adv.
Mr. Tridib Bose, Adv.
.....for the petitioners.

Mr. Mayukh Maitra, Adv.
Ms. Suchishmita Chatterjee, Adv.
.....for respondent nos. 1 & 2.

The Court :- The petitioner has prayed for rescinding and/or withdrawal and/or cancelling the letters dated 5th November, 2019 and/or 31st March, 2020 and/or the order dated 6th February, 2020 and/or the order of the first committee which is said to have been never communicated to the petitioner issued by the Committee of the respondent bank constituted in terms of the Reserve Bank of India Master Circular on Wilful Defaulters dated July 1, 2015. On behalf of the petitioner it is submitted that the said Circular dated July 1, 2015 provides for two-tier mechanism before a person is declared as a wilful

defaulter. There is an Identification Committee which identifies that the petitioner is liable to be declared as a wilful defaulter and then the Review Committee which ultimately put in the seal to declare the petitioner as a wilful defaulter. Thereafter the name of the petitioner is published as a wilful defaulter. The petitioner says that the first committee that is the Identification Committee did not come to a definite conclusion that the petitioner is liable to be declared as a wilful defaulter. On the other hand, the Review Committee has mechanically declared the petitioner as a wilful defaulter even though there is no finding to that effect by the Identification (First) Committee. The orders passed by the Review Committee, as also the manner of conducting the proceeding by the First Committee according to the petitioner, are illegal and without jurisdiction. The said orders and/or communications made on basis thereof are, therefore, required to be recalled and/or rescinded.

Records reveal that this matter on being moved on 29th June, 2020 a limited interim order was passed restraining the respondent bank from publishing the name of the petitioner in the wilful defaulters' list.

On behalf of the respondent bank he submitted that the order dated 29th June, 2020 was obtained by suppressing the actual state of affairs. The respondent bank had made several communications prior to 29th June, 2020 which were duly received by the petitioner, despite thereof the petitioner submitted otherwise. It is further submitted on proper scrutiny and after following the required procedure, the bank has come to the conclusion that the petitioner no. 1 is a defaulter. The petitioners, therefore, cannot have any

grievance. The respondent bank submits that on the ground of suppression alone the interim protection granted by the order dated 29th June, 2020 should be withdrawn. The respondent bank, however, has not brought on record any document as of now to substantiate suppression. In any event, according to the respondent bank, the order is of limited nature and unless extended will die its natural death. The respondent bank submits that the order should not be extended and the writ petition be dismissed.

The Reserve Bank of India had formulated the Master Circular on Wilful Defaulters to check the meddling with the bank's money. This circular provides for very strict measure against the defaulting party and/or the person behind the entities which commits such wilful default.

Considering the seriousness of the circular, it is expected that the banks and, in the instant case, the respondent bank should comply with all the statutory requirements as also observe the principles of natural justice. The economic situation of the country owing to Covid 19 pandemic is uncertain. In such situation, it is the balance of convenience and inconvenience which should be the primary guiding factor in granting injunction or restraining order in the case like the present one after a prima facie case is established.

Coming to the balance of convenience and inconvenience in the instant case, the bank will suffer less prejudice than the petitioner if the bank is not allowed to publish the petitioner's name in the wilful defaulters' list whereas the petitioner will suffer greater prejudice if his name figures in the wilful defaulters' list. The petitioner by referring to the orders and documents have made out a

prima facie case. Considering balance of convenience and inconvenience and the prima facie case, I am of the view that the interim order already passed should be allowed to continue. The respondent bank and/or its officials are restrained from publishing the petitioner's name in the wilful defaulters' list till 17th August, 2020. Since the respondent bank says that the premises on which the initial order of injunction dated 29th June, 2020 was obtained is tainted with suppression, the respondent will be at liberty to seek for discharge and/or variance of the order the order passed on 29th June, 2020 which is now being extended by the instant order.

Affidavit-in-opposition be filed within a period of two weeks from date; affidavit-in-reply, if any, within a week thereafter.

Let this matter appear on any date after expiry of four weeks subject to the convenience of the Court.

In view of the order passed in the writ petition, no further order is required to be passed in GA No. 838 of 2020 and the same is disposed of accordingly without any order as to costs.

(ARINDAM MUKHERJEE, J.)

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