Before M.M. Kumar & Ajay Kumar Mittal, JJ.

PUNJAB & SIND BANK,—*Petitioner*

versus

DEBTS RECOVERY APPELLATE TRIBUNAL AND OTHERS,—*Respendents*

CWP No. 8267 of 2007

21st November, 2007

Banking Regulation Act, 1949—Ss. 21 and 35—A—Constitution of India, 1950—Art. 226—Default in repayment of loan amount—Tribunal allowing application of Bank & issuing recovery certificate—Defaulters filing appeal & applying for one time settlement of account as per RBI guidelines—Bank rejecting offer for OTS—Tribunal allowing application u/s 21 and entertaining appeal without pre-deposit of amount—Tribunal allowing appeal & directing Bank to make OTS as per RBI guidelines—Tribunal also affirming recovery certificate—Guidelines for OTS issued by Chief General Manager, RBI-No statutory authority to CGM for issuing guidelines—Whether these guidelines could be regarded as statutory in character so as to confer a legal right—Held, no—Provisions of 1949 Act do not empower a Chief General Manager to issue OTS scheme—In the absence of any statutory flavour creating rights & duties between parties, guidelines could not be enforced by issuing directions to Banks/financial institutions by Courts/Tribunal.

Held, that Reserve Bank of India is clothed with the power to issue directions to the banking companies then it could do so if it is satisfied that issuance of such direction is in the public interest or in the interest of banking policy or to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or prejudicial to the interests of the banking company or to secure the proper management of the banking company, which such banking company is bound to follow. The power has been given to the Reserve Bank of India, which means the bank which is constituted under Section 3 of the Reserve Bank of India Act, 1934. The guidelines which are in the nature of one time settlement

and issued by the Chief General Manager cannot be regarded as statutory nor these guidelines have been issued by the Reserve Bank of India.

(Paras 10 & 11)

Held, that the guidelines for One Time Settlement issued by the Reserve Bank of India do not not have any statutory flavour creating rights and duties between the parties, which could be enforced by remedy of a writ in the nature of mandamus.

(Para 14)

I.P. Singh, Advocate, *for the petitioner.*

Anand Chhibbar, Advocate, *for respondents Nos. 2 to 14.*

M.M. KUMAR, J.

(1) This petition filed under Article 226 of the Constitution prays for quashing order dated 13th April, 2007 (P-14), passed by the Debts Recovery Appellate Tribunal, Delhi (for brevity, 'the Tribunal') to the extent it directs the petitioner bank to settle the case of private respondents under the Reserve Bank of India's guidelines as applicable at the time of declaring the account as Non Performing Assets (NPA) and not to recover the amount as per the judgment and Recovery Certificate, dated 23rd November, 2006 in O.A. No. 606/2006 (P-1 & P-2), issued by the Debts Recovery Tribunal-II, Chandigarh, in Appeal No. 26 of 2007 (P-11) filed by respondent Nos. 2 to 14. It has further been prayed that order dated 13th April, 2007 (P-14) may also be modified allowing Appeal No. 71 of 2007 (P-12), filed by the petitioner bank, entitling it to recover the amount of Rs. 4,16,58,581.62 paise along with 16.5% pendente lite and future interest with quarterly rests from the date of filing of O.A. till its realization from respondent Nos. 2 to 14 jointly and severally.

(2) Facts in brief are that respondent Nos. 2 to 14 along with Smt. Darshan Kaur (since deceased) wife of Late S. Sardar Singh and mother of respondent Nos. 3, 4 and 12 approached the petitioner bank for availment of loan facilities for business purposes in the name of M/s Sardar Associates Limited-respondent No. 2 and a loan for an amount of Rs. 3,54,50,000 was sanctioned and disbursed from time to time. Respondent

Nos. 3 to 14 as well as Smt. Darshan Kaur (since deceased) stood as guarantors and in addition thereto respondent Nos. 2, 3, 7 and 9 mortgaged their properties in favour of the petitioner bank as security of the loan amount. However, respondent Nos. 2 to 14 defaulted in making repayment of the loan. On 31st March, 2001, their accounts were declared as Non Performing Assets (NPA) as per the guidelines issued by the Reserve Bank of India. On 9th August, 2002, a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 (for brevity, 'the Act') was issued to respondent Nos. 2 to 14 for payment of an amount of Rs. 3,54,29,168.87 paise along with interest within a period of 60 days. The aforementioned notice was followed by another notice issued under Section 13(4) of the Act as respondent Nos. 2 to 14 failed to make payment within stipulated time. Thereafter the petitioner-bank filed an application before the Debts Recovery Tribunal at Chandigarh (for brevity, 'the DRT') against respondent Nos. 2 to 14 as well as Mrs. Darshan Kaur for recovery of Rs. 4,16,85,443.62 paise inclusive of interest up to 31st July, 2003. On 23rd November, 2006, O.A. No. 606 of 2006 was allowed and a Recovery Certificate of even date, for recovery of Rs. 4,16,58,581.62 paise along with pendentelite and further interest @ 12% p.a. with quarterly rests from the date of filing of O.A. till realization was issued (P-1 & P-2 respectively).

(3) Feeling aggrieved, respondent Nos. 2 to 14 filed an appeal under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for brevity, 'the 1993 Act'), before the Tribunal. Alongwith the appeal an application under Section 21 of the 1993 Act, bearing M.A. No. 16 of 2007 was also filed, seeking waiver of deposit of amount (P-3). On 20th March, 2006, respondent No. 2 approached the petitioner-bank for settlement of their account as per Reserve Bank of India guidelines and an offer for one time settlement of Rs. 345.31 lacs was made (P-7). However, the petitioner-bank rejected the proposal. Respondent No. 2 then filed C.W.P. No. 16809 of 2006 in this Court challenging Circular No. 176, dated 18th October, 2005, issued by the petitioner-bank claiming that it was contrary to the guidelines on One Time Settlement Scheme of SME accounts issued by the Reserve Bank of India, dated 3rd September, 2005. It was further prayed that the bank be directed to settle the matter as per RBI guidelines. A Division Bench of this Court dismissed

the aforementioned writ petition,—*vide* order dated 21st November, 2006, inasmuch as, it was not disclosed in the writ petition that the petitioner-bank had already gone to the DRT for recovery of the disputed amount (P-6). Respondent No. 2 further assailed the order dated 21st November, 2006 before Hon'ble the Supreme Court and SLP No. 21134 of 2006 was also dismissed on 31st January, 2007 (P-9).

(4) On 8th February, 2007, the Tribunal allowed the application under Section 21 of the 1993 Act and the appeal filed by respondent Nos. 2 to 14 was entertained without pre-deposit of amount (P-10). The writ petition filed by the petitioner-bank against the aforementioned order was dismissed. It is also appropriate to notice here that the petitioner-bank also filed an appeal before the Tribunal against the judgment and recovery certificate dated 23rd November, 2006 (P-1 & P-2) claiming pendentilite and future interest @ 16.50% with quarterly rests instead of 12% p.a. On 13th April, 2007, the Tribunal dismissed the appeal filed by the petitioner-bank and the appeal filed by respondent Nos. 2 to 14 has been allowed directing the petitioner-bank to make one time settlement as per RBI guidelines applicable at the relevant time (P-14). The Tribunal, however, affirmed the judgment and recovery certificate dated 23rd November, 2006 (P-1 & P-2). The Tribunal, has further permitted respondent Nos. 2 to 14 to sell the secured properties for clearing dues under One Time Settlement. It has also been ordered that the entire exercise be completed within a period of four months and till such time the petitioner-bank shall not take any coercive steps against them.

(5) At this stage it would be appropriate to notice guidelines issued by the Reserve Bank of India from time to time on the subject of One Time Settlement of NPA account. As per the guidelines issued on 29th January, 2003 it was stipulated that the minimum recoverable amount in respect of 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 date on which the account was categorized as doubtful NPAs, whichever happened earlier. On 21st February, 2003, the petitioner-bank sought clarification from the Reserve Bank of India as to whether the bank can recover more than the minimum recoverable amount where sufficient property/security was available with the bank (P-15). On

11th March, 2003, the Reserve Bank of India issued a clarification that there was no restriction on maximum amount recoverable. However, any deviation from the settlement guidelines for any borrower should be made only by the Board of Directors of the bank (P-16). The petitioner-bank also placed on record OTS policy approved by its Board of Directors, dated 18th October, 2005 (P-17) and RBI Guidelines dated 3rd September, 2005 (P-18), which empowered the bank to deviate from the guidelines, subject to approval of the Board of Directors.

(6) In the written statement filed on behalf of respondent Nos. 2 to 14 factual position as disclosed in the wirt petition has not been controverted. It has been asserted that they approached the petitioner-bank for one time settlement in view of the RBI guidelines,—*vide* letter dated 30th January, 2006 and after considering their case the petitioner-bank,—*vide* letter dated 17th February, 2006 informed them that the minimum recoverable amount was Rs. 370.49 lacs but as the same was linked with the fair market value of the security charged to the bank, therefore, the amount recoverable was Rs. 4.92 crores. The petitioner-bank ifself approached respondent Nos. 2 to 14 to submit fresh offer,—*vide* letter dated 1st March, 2006 (R-2). However, the bank rejected the offer,—*vide* their letter dated 25th March, 2006 (P-21). Respondent Nos. 2 to 14 have claimed that the Tribunal has rightly dismissed the appeal filed by the petitioner-bank and that the Tribunal is competent to issue directions to the banks to settle the outstanding amounts as per RBI guidelines under the 1993 Act.

(7) After hearing learned counsel for the parties and perusing the record with their able assistance, we find that the short question which arises before this Court is as to whether the guidelines issued by the Reserve Bank of India for one time settlement could be regarded as statutory in character so as to confer a legal right, which could be enforced by issuing directions to the banks/financial institutions by the Courts/Tribunals in exercise of their inherent powers either under Article 226 of the Constitution or any other law.

(8) It is undisputed that respondent Nos. 2 to 14 have committed defaultted in making payment of the dues of the petitioner-bank. There is, thus, no equity in their favour. The petitioner-bank has secured assets in

the form of various properties as detailed in para 12 of the writ petition, total market value of which is more than Rs. 11 crores as per valuation reports of December 2006, which could satisfy all its claims then there would not be any legal or equitable obligation on the part of the petitioner-bank to enter into one time settlement. A perusal of guidelines/one time settlement scheme issued on 3rd September, 2005 (P-18) would show that these have been issued by the Chief General Manager of the Reserve Bank of India. In order to acquire statutory flavour, the policy is to be determined in relation to advances to be followed by banking companies by the Reserve Bank of India. There is no statutory authority given to the Chief General Manager under which he could issue guidelines for one time settlement so as to be covered by the statutory flavour envisaged by Section 21 and 35A of the Banking Regulation Act, 1949 (for brevity, 'the 1949 Act'). Section 21 and 35A of the Act may read thus :—

> "21. Power of Reserve Bank to control advances by banking companies.—(1) Where the Reserve Bank is satisfied that it is necessary or expedient in the public interest or in the interest of depositions or banking policy so to do, it may determine the policy in relation to advances to be followed by banking companies generally or by any banking companies or the banking company concerned, as the case may be, shall be bound to follow the policy as so determined.
>
> (2) Without prejudice to the generality of the power vested in the Reserve Bank under sub-Section (1), the Reserve Bank may give directions to banking companies, either generally or to any banking company or group of banking companies in particular, as to —
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> (a) the purposes for which advance may or may not be made,
>
> (b) the margins to be maintained in respect of secured advances,
>
> (c) the maximum amount of advances or other financial accommodation which, having regard to the paid-up capital, reserves any deposits of a banking company and relevant considerations, may be made by that banking company, to any one company, firm, association of persons or individual,

(d) the maximum amount up to which, having regard to be considerations referred to in cl.(c), guarantees may be given by a banking company on behalf of any one company, firm, association of persons or individual, and

(e) the rate of interest and other terms and conditions on which advances or other financial accommodation may be made or guarantees may be given.

(3) Every banking company shall be bound to comply with any directions given to it under this section."

"35-A. Power of the Reserve Bank to give directions.—(1) Where the Reserve Bank is satisfied that—

(a) in the public interest; or

(aa) in the interest of banking policy; or

(b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or

(c) to secure the proper management of any banking company generally; it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

(2) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any directions issues under sub-section (1) and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect."

(9) A perusal of the aforementioned sections would show that the Reserve Bank of India wherever satisfied may determine a policy in relation to advances which is to be followed by the banking companies generally or by any banking company or by any group of banking companies or the

banking company concerned. Such policy as determined by the Reserve Bank of India is determined by keeping in view the public interest or the interests of the depositors and has been made binding on all concerned. Sub-section (2) of Section 21 of the Act envisages determination of rate of interest and other terms/conditions on which advances or other financial accommodation may be made or guarantees may be given.

(10) Likewise, the Reserve Bank of India is also clothed with the power to issue directions to the banking companies then it could do so if it is satisfied that issuance of such direction is in the public interest or in the interest of banking policy or to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or prejudicial to the interests of the banking company or to secure the proper management of the banking company, which such banking company is bound to follow.

(11) The power has been given to the Reserve Bank of India, which means the bank which is constituted under Section 3 of the Reserve Bank of India Act, 1934. The guidelines which are in the nature of one time settlement and issued by the Chief General Manager cannot be regarded as statutory nor these guidelines have been issued by the Reserve Bank of India. The judgement of Hon'ble the Supreme Court rendered by the Constitution Bench in the case of **Central Bank of India** *vesus* **Ravindra, (1),** has discussed the law on various other issues but has summed up six propositions. In conclusion No. 5, the emphasis is on the nature of directions issued by the Reserve Bank of India and not by any of its functionary and the same reads as under :—

> "(5) The power conferred by sections 21 and 35A of the Banking Regulation Act, 1935 is coupled with duty to Act. Reserve Bank of India is prime banking institution of the country entrusted with a supervisory role over banking and conferred with the authority of issuing binding directions, having statutory force, in the interest of public in general and preventing banking affairs from deterioration and prejudice as also to secure the proper management of any banking company generally. Reserve Bank of India is one of the watch-dogs of finance and economy of the nation. It is, and it ought to be, aware of all relevant

(1) JT 2001 (9) S.C. 101

factors, including credit conditions as prevailing, which would invite its policy decisions. RBI has been issuing directions/ circulars from time to time which, *inter alia,* deal with rate of interest which can be charged and the periods at the end of which rests can be struck down, interest calculated thereon and charged and capitalized. It should continue to issue such directives. Its circulars shall bind those who fall within the net of such directives. For such transaction which are not squarely governed by such circulars, the RBI directives may be treated as standards for the purpose of deciding whether the interest charged is excessive, usurious or opposed to public policy."

(12) It is well settled that in the absence of any statutory obligation created by guidelines or instructions, a writ of mandamus cannot be issued, as has been held in various judgements of Hon'ble the Supreme Court in the cases of **Rai Shivendra Bahadur** *versus* **Nalanda College, (2) Umakant Saran** *versus* **State of Bihar, (3)** ; **Mani Subrat Jain** *versus* **State of Haryana, (4)** ; **Ramesh Prashad Singh** *versus* **State of Bihar, (5)** ; **Union of India** *versus* **Orient Enterprises, (6)** 501 ; and **Union of India** *versus* **C. Krishna Reddy, (7)** ; Moreover, in contractual matters the Courts are reluctant to issue a writ of mandamus. In this regard reliance is place on judgement of Hon'ble the Superme Court in the case of **LIC of India** *versus* **Asha Goel, (8).** Hon'ble the Supreme Court in the case of **Peerless General Finance and Investment Co Ltd.,** *versus* **Reserve Bank of India, (9)** has observed as under :—

"31. .....Reserve Bank of India which is banker's bank is a creature of statute. It has large contingent of expert advise relating to the matters affecting the economy of entire country and nobody can doubt the *bona fides* of the Reserve Bank, in issuing the impugned directions of 1987. The Reserve Bank

(2) AIR 1962 S.C. 1210
(3) (1973) 1 S.C.C. 485
(4) (1977) 1 S.C.C. 486
(5) (1978) 1 S.C.C. 37
(6) (1998) 3 S.C.C. 501
(7) (2003) 12 S.C.C. 627
(8) (2001) 2 S.C.C. 160
(9) (1992) 2 S.C.C. 343

plays an important role in the economy and financial affairs of India and one of its important functions is to regulate banking system in the country.

32. .....Courts are not to interfere with economic policy, which is the function of experts. It is not the function of the courts to sit in judgement over the matters of economic policies and it must necessarily be left to the expert bodies."

(13) It is also apposite to notice here that we have already dismised C.W.P. Nos. 1152, 1239, 1240 and 1241 of 2007,—*vide* our detailed order dated 30th October, 2007, passed in the case of **Knittex Overseas Pvt. Ltd.** *versus* **State Bank of Patiala and others (C.W.P. No. 1152 of 2007),** wherein borrower companies approached this Court for issuance of direction to the State Bank of Patiala to settle the loan account in terms of the guidelines/directives issued by the Reserve Bank of India from time to time, which were rendered Non-Perfroming Asset(N.P.A.). We have also dismissed C.W. P. No. 1609 of 2006 along with bunch of 16 writ petitions ,—*vide* our order dated 5th November, 2007.

(14) The guidelines issued by the Reserve Bank of India are not different in the instant case that the one considered in the decision rendered by this Court to which reference has been made in the preceding para. On repeated queries by the Bench, learned counsel for respondent Nos. 2 to 14 have not been able to point out any provision of a statute under which guidlines for One Time Settlement could have been issued. Therefore, the ratio of the judgements rendered in the aforementioned cases would be fully applicable. Consequently, it has to be held that the guidlines for One Time Settlement issued by the Reserve Bank of India do not have any statutory flavour creating rights and duties between the parties, which could be enforced by remedy of a writ in the nature of mandamus. Therefore, the directions issued by the Tribunal in order dated 13th April, 2007 (P-14) are liable to be set aside.

(15) For the reasons aforementioned, instant writ petition deserves to be allowed. The order dated 13th April, 2007, (P-14), passed by the Tribunal is hereby set aside and that of the Debts Recovery Tribunal-II, Chandigarh, dated 23rd November, 2006 (P-1) is restored.

R.N.R.