SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Durga Hotel Complex Vs. Reserve Bank of India and ors.

Durga Hotel Complex Vs. Reserve Bank of India and ors.

SooperKanoon Citation : sooperkanoon.com/123642

Court : Patna

Decided On : Jan-23-2004

Judge : Radha Mohan Prasad, J.

Acts : Banking Regulation Act, 1949 - Sections 19 and 35A

Appeal No. : CWJC No. 10756 of 2002 with CWJC No. 1882 of 2003

Appellant : Durga Hotel Complexstate Bank of India

Respondent : Reserve Bank of India and ors.Durga Hotel Complex

Advocate for Pet/Ap. : Navin Sinha and Alok Kr. Agrawal for Durga Hotel Complex, Chitranjan Sinha and Mukund Jee for State Bank of India and Seema Ali Khan, Adv. for Reserve Bank of India

Prior history : Radha Mohan Prasad, J. 1. In first writ petition, petitioner has sought for direction to the State Bank of India to carry out the directions given to it by the Banking Ombudsman in his order dated 30th March, 2002 in a dispute between the petitioner and the bank and second writ petition has been field by the Bank challenging the said order. Vide order dated 7.4.2003 both these writ petitions were directed to be heard together, and, as such, both these writ petitions have been heard together,

Judgement :

Radha Mohan Prasad, J.

1. In first writ petition, petitioner has sought for direction to the State Bank of India to carry out the directions given to it by the Banking Ombudsman in his order dated 30th March, 2002 in a dispute between the petitioner and the bank and second writ petition has been field by the Bank challenging the said order. Vide order dated 7.4.2003 both these writ petitions were directed to be heard together, and, as such, both these writ petitions have been heard together, as prayed by the learned counsel for the parties and are being disposed of by this common order.

2. The petitioner of the first writ petition, which is a partnership firm applied to the respondent-State Bank of India, hereinafter referred to as 'the Bank', for grant of loan in the year 1995 with the total project cost of Rs. 33.33 lacs for construction of Hotel-cum-Shopping Complex. The proposal for a term loan of Rs. 24 lacs was considered at Zonal Office level and was finally rejected on 25.7.1996. The petitioner resubmitted the proposal with necessary amendments and finally a loan of Rs. 15 lacs was sanctioned vide Zonal office note dated 24.4.1997 On completion of necessary formalities a sum of Rs. 11,58,750/- was disbursed till December, 1998, when the Bank decided to call back the loan, and, thus, further disbursement was stopped. According to the respondent-State Bank of India, the Bank took the decision as there was; (a) diversion of fund (b) unilateral enlargement of project size with material deviations in the parameters of construction. The petitioner-firm submitted a revised project of Rs. 75 lacs. The Advisory Committee of the Bank in its report dated 14.1.1999 recommended that at least the project required a term loan of Rs. 30.51 lacs on the basis of revised cost project and a working capital of Rs. 15 lacs is required. It further recommended that term loan will be repayable in 60 monthly instalments excluding the year of moratorium period. On consideration of the said recommendation and various other factors like diversion of funds, lack of genuine interest in the project, unsuitability of collateral security, credibility of promoters and unsuitability of projects, a decision was taken to call back the loan and not to take any further exposure and start the recovery proceedings which was communicated to the promoter by letter dated 28.6.1999 (Annexure 1 to the first writ petition) and letter dated 31.8.1999 (Annexure 1 to the second writ petition). The Bank in consonance

with its decision served a legal notice on 5.2.2000 recalling the loan along with the interest of Rs. 14,30,876/- and then a proceeding was initiated before the learned Ombudsman on 11.4.2000 vide complaint case No 88 of 2000. The Bank also filed original application bearing No. O.A. 157 of 2000 before the Debt Recovery Tribunal for recovery of the amount which is pending disposal.

3. Learned Ombudsman after hearing the parties passed the impugned order directing that (i) balance amount of Rs. 3,41,250/- as per earlier sanctioned loan be disbursed; (ii) the recommendation of the Committee regarding revised project proposal of Rs. 75 lacs be honoured; (iii) the financial ratio 75.25 be maintained between Bank and the complainant; (iv) repayment should be made within seven years excluding one year moratorium and (v) the period of moratorium be enhanced according to the Rules and interest be charged strictly in accordance with RBI guidelines. The Bank has claimed that they referred the award to RBI and sought guidelines and direction for challenging the award in a court of law and the RBI by letter dated 12.11.2002 gave permission for the same. Thereafter the bank filed CWJC No. 1882 of 2003 challenging the impugned award.

4. Mr. Chittranjan Sinha, learned counsel appearing for the State Bank of India has submitted that the issue of grant of loan is beyond the subject matter and authority of the learned Ombudsman as per Banking Ombudsman Scheme. He submitted that Clause 13(b) of the Scheme clearly indicates that learned Ombudsman cannot consider any matter other than what has been mentioned therein. According to him, learned Ombudsman has exceeded in his jurisdiction by issuing directions relating to loan disbursement and has not only fixed period of repayment but at the same time enhanced the period of moratorium. The impugned award travels even beyond the relief sought for by the petitioner of first writ petition and is bad in law. He further submitted that the matter is pending adjudication in Debt Recovery Tribunal and when a competent court is in seisin of the matter, the learned Ombudsman ought not to have passed the award and the complainant firm may claim their relief in the suit pending before the Debt Recovery Tribunal.

5. Mrs. Khan, learned counsel appearing for Reserve Bank of India has submitted that matters relating to grant, cancellation or non-granting of loan cannot be

subject matter of jurisdiction of Banking Ombudsman under the Scheme, and, as such, the RBI has allowed the Bank to challenge the order of the Ombudsman as the order has gone into facts beyond its jurisdiction and authority provided under Clause 13 of the Scheme.

6. Mr. Navin Sinha, learned counsel appearing for the petitioner in first writ petition, on the other hand, has submitted that Clause 13(b) of the Scheme provides that the Ombudsman has the power to take action for non-observance of Reserve Bank directives on interest rates, delay in sanction/non-observance of prescribed time scheme for disposal of loan application and non-observation of any other direction or instructions of Reserve Bank as may be specified for the purpose. The Bank did not submit any objection to the recommendations of the Ombudsman made under Section 19 of the Scheme and, thereafter, the Ombudsman passed the final award.

7. The Banking Ombudsman Scheme was passed in exercise of the powers conferred by Section 35A of the Banking Regulation Act, 1949. In the notification it is stated that Reserve Bank being satisfied that it is necessary in public interest and in the interest of Banking policy to provide for a system of Banking Ombudsman for redressal of grievances against deficiency in Banking Services, concerning loans and advances and other specified matters, directed that commercial Banks and scheduled primary Cooperative Banks to comply with the Banking Ombudsman Scheme. The object of the Scheme is to enable resolution of complaints relating to provision of Banking services and to facilitate the satisfaction, or settlement of such complaints. Chapter III deals with jurisdiction, powers, and duties of Banking Ombudsman. Clause 13(b) of the Scheme reads thus :

13(b) Complaints concerning loans and advances only insofar as they relate to :--

(i) non-observance of Reserve Bank Directives on interest rates;

(ii) delays in sanction/non-observance of prescribed time schedule for disposal of loan applications and

(iii) non-observance of any other directions or instructions of the Reserve Bank, as may be specified for this purpose, from time to time.

Chapter IV of the Scheme provides for procedure for redressal of grievance and Clause 16(d) of the Scheme provides that no complaint to the Banking Ombudsman is maintainable if the complaint is the same subject matter for which any proceedings before any Court, Tribunal or Arbitrator or any other forum is pending.

8. In the light of the Banking Ombudsman Scheme and considering the reliefs sought for by the complainant-firm and the impugned award made by the learned Ombudsman, the question for consideration is whether the complaint made by the complainant-firm was maintainable before the Banking Ombudsman and whether the learned Ombudsman has exceeded in its jurisdiction in making the impugned award.

9. Bare perusal of the reliefs sought for by the complainant-firm, contained in Annexure-Q to the supplementary counter affidavit filed on behalf of respondent No. 1-M/s Durga Hotel Complex, show that his grievance neither relate to non-observance of Reserve Bank Directives on interest rates nor in regard to delay in sanction/non-observance of prescribed time schedule for disposal of loan applications and non-observance of any other directions or instructions of the Reserve Bank, for which the Banking Ombudsman has jurisdiction to entertain the complaints concerning loans and advances. More so, Clause 16(d) of the scheme provides that no complaint to the Banking Ombudsman is maintainable if the complaint is the same subject matter for which any proceedings before any Court, Tribunal or Arbitrator or any other forum is pending. It has not been disputed that the Bank filed original application bearing No. O.A. 157 of 2000 before the Debt Recovery Tribunal for recovery of the amount, which is pending and in which both the parties have appeared. When the Debt Recovery Tribunal is in seisin of the matter the learned Ombudsman ought not to have proceeded with the complaint petition and the complainant-firm i.e. petitioner of first writ petition can claim his relief in the suit pending before the Debt Recovery Tribunal by filing counter claim.

10. In the aforementioned circumstances, the award/order dated 30.3.2002 passed by learned Ombudsman is set aside and CWJC No. 1882 of 2003 filed by the Bank is allowed and CWJC No. 10756 of 2002 is dismissed. The petitioner-M/s. Durga Hotel Complex may file counter claim before the Debt Recovery Tribunal in ' Original application bearing No. O.A. 157 of 2000 filed by State Bank of India. However, it is made clear that dismissal of the writ petition shall not in any manner adversely affect the claim of the petitioner, if raised before the Debt Recovery Tribunal by way of counter claim on merits.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com