

2015 C L D 1849

[Sindh]

Before Muhammad Shafi Siddiqui, J

THARPARKAR SUGAR MILLS LTD. through Chief Executive---Plaintiff

Versus

NATIONAL DEVELOPMENT FINANCE CORPORATION through Manager and 10 others---Defendants

Suit No.B-29 of 2005, heard on 18th November, 2014.

Financial Institutions (Recovery of Finances) Ordinance (XLVI of 2001)---

---Ss. 9, 19, 22 & 27---State Bank of Pakistan, BPD Circular No.29 dated 15-10-2002--- Suit for declaration and injunction---Auction of property---Plaintiff company filed application for restraining defendant Bank from auctioning its property to recover outstanding amount in pursuance of decree passed in an earlier suit---Plea raised by plaintiff company was with regard to applicability of State Bank of Pakistan, BPD Circular No.29 dated 15-10-2002---Validity---Enforcement of BPD Circular No.29 by individual Banks to their respective customers was in fact the prerogative of Banks and it was for them to decide whether such debt outstanding against customer was a lost debt or recoverable in terms of assets mortgaged with them---State Bank of Pakistan, BPD Circular No.29 was binding once the Bank reached to a decision that such debt was not recoverable or a lost category and then procedure and parameters as laid down therein were to be adopted as a binding parameter but prima facie not in terms of its mandatory application---Judgment. and decree passed in earlier suit could not be made subservient to the outcome of present suit in terms of Ss. 22 & 27 of Financial Institutions (Recovery of Finances) Ordinance, 2001---Any mode whereby consent decree passed in earlier suit was sought to be deferred, modified, altered and reviewed was violative of law--- Application was dismissed in circumstances.

Dr. Muhammad Farogh Naseem for Plaintiff. Adnan Iqbal Chaudhry for Defendant No.7. Khalid Anwar for NIB Bank.

Dates of hearing: 12th, 21st March, 17th November and 18th November, 2014.

JUDGMENT

MUHAMMAD SHAFI SIDDIQUI, J.---In this application the plaintiff has prayed for passing restraining order against defendants from auctioning the plaintiff's property for the purposes of recovery of the outstanding amount in pursuance of the decree passed in Suit No.1507 of 1998 filed under section 9 of Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997.

Learned counsel while arguing this application has taken numerous grounds involving applicability of BPD Circular 29 however on perusal of judgment/order passed in H.C.A. No.7 of 2013 at the time of arguing the application learned counsel for the plaintiff has confined his arguments only with regard to applicability of Article 25 of the Constitution of Islamic Republic of Pakistan to the extent of defendant No.7 in relation whereof the Official Assignee has issued notice for settling the terms of sale proclamation.

Learned counsel for the purposes of this urgent issue, as the notice for the settlement of the terms of sale proclamation has been issued, has argued that one Bachani Sugar Mills Limited was given a treatment whereby they were allowed two years moratorium period and five years period for making payment in ten installments and he claims

that the same treatment may be accorded to the plaintiff. He claims that indifferent treatment is discriminative and biased.

Learned counsel for the plaintiff has placed on record such letter of Banker's Equity Limited in relation to the accounts of Bachani Sugar Mills Limited and submitted that the

defendant No.7 has adopted this discriminative treatment only as far as the plaintiff is concerned and the same should not have been done as the plaintiff is also entitled for an equal and fair treatment in this regard.

Since the plaintiff has confined its case to the extent of availing same treatment as given to Bachani Sugar Mills Limited I would not comment on the applicability of BPD Circular 29. More importantly all the issues that have been agitated in the instant application have been dealt with in detail in the judgment/order passed in High Court Appeal No.7 of 2013 hence it is not necessary for me to comment much about the entitlement thereunder.

The record shows that a decree in Suit No.1507 of 1998 was passed by consent of the parties and the said decree was passed on 15-5-1999. The plaintiff chose to avail the benefit as available to them at the relevant time in pursuance of the scheme for "sick units". The record also shows that after such compromise was entered into, certain installments were also paid however on account of failure to adhere to the terms of the compromise decree on the part of the plaintiff, the execution application was filed.

It appears that the learned counsel for the plaintiff has already availed the benefit as arising out under the rescheduling scheme for sick units and the plaintiff opted to avail such remedy as determined and agreed upon and incorporated in the decree hence it cannot be presumed that the plaintiff has been discriminated or that he is entitled for a treatment as given to Bachani Sugar Mills Limited when the company itself chooses to be subjected to the terms as agreed upon/determined in the compromise in pursuance of scheme for sick units. The case of Bachani Sugar Mills is not before me to ascertain how and in what circumstances such facilities were availed by it. Indeed the BPD Circular 29 does provide a mechanism for cases which have been decreed to pursue remedy under BPD Circular 29 however it is those decreed cases which were not covered by a decree passed under any beneficial scheme such as in this case when decree was passed in pursuance of a scheme for sick industrial units.

Even otherwise, the enforcement of BPD Circular 29 by the individual banks to their respective customer is in fact the prerogative of the banks and it is for them to decide whether such debt outstanding against the customer is a lost debt or recoverable in terms of the assets mortgaged with them. Such BPD Circular 29 is of course binding once the bank reaches to a decision that such debt is not recoverable or a lost category and then the procedure and the parameters as laid down therein are to be adopted as a binding parameter but prima facie not in terms of its mandatory application.

In the judgment passed in High Court Appeal No.7 of 2013, as referred above, it has been observed that the judgment and decree passed in Suit No.1507 of 1998 cannot be made subservient to the outcome of the instant suit in terms of sections 22 and 27 of Financial Institutions (Recovery of Finances) Ordinance, 2001 and hence any mode whereby the consent decree passed in Suit No.1507 of 1998 is sought to be deferred, modified, altered, reviewed would be violative of law.

In view of the above, I do not find any substance in the application, which is accordingly dismissed.

MH/T-7/Sindh

Application dismissed.