



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

TUESDAY, THE 19TH DAY OF SEPTEMBER 2023 / 28TH

BHADRA, 1945

WP(C) NO. 23209 OF 2022

PETITIONER:

KURIEN E KALATHIL,
CONTRACTOR, TC 14/1004, KEK TOWER VAZHUTHACAUD,
THIRUVANANTHAPURAM.

BY ADVS.

M.RAMESH CHANDER (SR.)

BALU TOM

BONNY BENNY

GOVIND G. NAIR

BEJOY JOSEPH P.J.

RESPONDENTS:

- 1 THE FEDERAL BANK LTD.,
GARDEN HEIGHTS, KOWDIAR. P.O., NANTHENCODE,
THIRUVANANTHAPURAM-695 003 REPRESENTED BY ITS
ASSISTANT VICE PRESIDENT AND BRANCH HEAD,
BRANCH NANTHENCODE.
- 2 THE DIVISIONAL HEAD,
THE FEDERAL BANK LTD. LCRD/TRIVANDRUM DIVISION,
4TH FLOOR, FEDERAL TOWERS, STATUE,
THIRUVANANTHAPURAM-695 001.
- 3 RESERVE BANK OF INDIA,
CENTRAL OFFICE, MUMBAI REPRESENTED BY THE CHIEF
GENERAL MANAGER, RESERVE BANK OF INDIA,
DEPARTMENT OF REGULATION, CENTRAL OFFICE, WORLD
TRADE CENTRE, CUFFE PARADE, MUMBAI 400 005.
- 4 GENERAL MANAGER, RESERVE BANK OF INDIA, BAKERY
JUNCTION ROAD, NANDAVANAM, PALAYAM,
THIRUVANANTHAPURAM-695 033.

BY ADVS.

Sunil Shankar A

MILLU DANDAPANI

VIDYA GANGADHARAN (K/000424/2020)

SANDHRA.S (K/001610/2021)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 19.09.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



C.R.

JUDGMENT

As is well known in fiscal spectrum, a 'Right of Recompense' is a tool by which the Banks and Financial Institutions - that take large haircuts on the debts for stressed assets, during resolution - can recover the sacrifice they make, in due course of time.

2. The contours of the afore right are now projected before this Court by the petitioner, saying that the enforcement of the same by the Bank in this case is untenable and for reasons which can never justify the same.

3. A woodcut of the essential facts would render the scope of controversy clear.

4. The petitioner calls into question the validity of Ext.P14 order issued by the 3rd respondent - General Manager, Reserve Bank of India, which has, in fact, been issued



pursuant to the directions of this Court in Ext.P8 judgment.

5. Compendiously, the petitioner had applied for a One Time Settlement with the 1st respondent - Federal Bank Ltd. ('Bank' for short), which was allowed, reserving to themselves a 'Right of Recompense'. The petitioner alleges that, subsequently, the Bank adjusted an amount of Rs.33,14,485.66, which was lying in his account even at the time when the afore One Time Settlement was granted by them, in spite of the fact that the same had been honoured by him fully; and therefore, that he had no other option, but to assail such action legally, which finally led to Ext.P8 judgment, whereby, a learned Judge of this Court directed the 3rd respondent to consider his complaint - produced therewith as Ext.P21, and to issue



an appropriate order. He alleges that, however, Ext.P14 order has now been issued by the 3rd respondent, without adverting to any of the *germane* aspects; and resultantly, that he has been constrained to approach this Court against the same.

6. Sri.M.Ramesh Chander - learned Senior Counsel, instructed by Sri.Govind G.Nair - appearing for the petitioner, argued that, reserving of the 'Right of Recompense' by the Bank to themselves in the One Time Settlement is one thing; while, their entitlement to exercise the same is another. The learned Senior Counsel pointed out that, in this case, at the time when the One Time Settlement was offered to his client, the afore said amount was remaining in his account and that this was fully available to the Bank's information. He asserted that the



One Time Settlement offer was granted by the Bank advertig to this; and therefore, that they could not have then exercised their 'Right of Recompense' against the said sum, as if his client had suppressed such information. The learned Senior Counsel contented that these vital aspects have not been considered by the 3rd respondent, while issuing Ext.P14; and thus prayed that it be set aside.

7. Sri.Millu Dandapani - learned Standing Counsel for the Reserve Bank of India, in refutation, submitted that Ext.P14 has been issued by the General Manager of his client evaluating to all relevant aspects, including after assessment of the rival assertions of the parties. He submitted that when the petitioner himself was aware that the Bank had reserved to themselves the



'Right of Recompense', he cannot stand in the way of them adjusting the amount available in his account. He thus prayed that Ext.P14 be left uninterdicted.

8. Sri.Sunil Shanker - learned Standing Counsel for the 1st respondent - Bank, very pertinently, submitted that his client had made the One Time Settlement Offer in favour of the petitioner, being unaware of the fact that an amount of Rs.33,14,485.66 was available in his account. He submitted that this sum was, in fact, the margin money offered by the petitioner, while availing a Bank Guarantee from his client; and therefore, that, in spite of due diligence, they were not aware of this amount remaining to the credit of the petitioner; thus causing them to offer a figure for settlement of the account, with substantial sacrifice. He



submitted that, therefore, under the principles of 'Right of Recompense', they were fully eligible to recover the available amount in the account of the petitioner and adjust it against the loan, since otherwise, this would amount to unjust enrichment in his favour.

9. When I evaluate and consider the afore dialectical submissions and test Ext.P14 on the applicable forensic yardsticks, it is rendered limpid that the fundamental question that ought to have engaged the mind of the 3rd respondent was not whether there was a 'Right of Recompense' reserved by the 1st respondent - Bank in their favour, but whether they were justified in exercising it for the reasons they have now said. This aspect has not been considered by the 3rd respondent in any manner, except



recording in Ext.P14 that, when a 'Right of Recompense' was reserved by the Bank in their favour, they were justified in adjusting the amount remaining in credit in the account of the petitioner thereafter. However, the vital question, as to whether the information of this amount being in credit in the account of the petitioner, was available to the Bank at the time when the One Time Settlement was granted; and whether, therefore, the 'Right of Recompense' could not have been invoked by them thereafter, has not been considered in Ext.P14 at all.

10. Presumably being aware of the mind of this Court as afore, Sri.Millu Dandapani - learned Standing Counsel for the Reserve Bank of India, submitted that, if this Court is not inclined to accept Ext.P14, then liberty may be reserved to his client to reconsider



the matter, adverting to the afore aspects also; but prayed that no affirmative declarations be made in favour of the petitioner at this stage. He submitted that this is because, the question whether the Bank had exercised the 'Right of Recompense' for valid reasons, is one also in the realm of facts, which will have to be assessed and determined by the Authority in terms of law.

11. I have no doubt that the afore suggestion of Sri.Millu Dandapani is the best available to the parties because, as rightly submitted by him, any decision to be arrived at by the 3rd respondent will have to be edified on proven germane factual circumstances, including, whether 1st respondent - Bank was aware of the amount in question remaining in credit in the account of the petitioner at the time when One Time



Settlement was offered; and, if not, if it was kept away from their information by the petitioner through some covert or other methods.

12. This is crucial because, the Right of Recompense can be exercised only in certain specific circumstances, as is well established in law; and until the 3rd respondent assesses these, a decision, akin to the one recorded in Ext.P14, could not have been taken, especially because it concludes that no "regulatory intervention" by the Reserve Bank is warranted. Since the Reserve Bank of India is an Authority vested with statutory powers to intervene in the regulatory ambit of Banks, under Section 35(a) of the Banking Regulation Act; and since this Court had earlier, through Ext.P8 judgment, directed the 3rd respondent to



consider the claim of the petitioner properly, I am without doubt that said Authority ought to have done so in its proper perspective, rather than have concluded in the manner, as now indited in Ext.P14.

In the afore circumstances, I allow this writ petition and set side Ext.P14; with a consequential direction to the 3rd respondent to reconsider the matter, adverting to the directions in Ext.P8 judgment and after hearing the parties again, assessing all their rival contentions - including the ones recorded above; thus culminating in an appropriate order and necessary action thereon, as expeditiously as is possible, but not later than four months from the date of receipt of a copy of this judgment.

I make it clear that my observations in



WPC 23209/22

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this judgment are not intended to trammel or
fetter the rights of the 3rd respondent in any
manner whatsoever; and that they have been
recorded only to guide me to the conclusion
herein and for no other.

Sd/-

DEVAN RAMACHANDRAN
JUDGE

ACR/SAS

APPENDIX OF WP (C) 23209/2022

PETITIONER'S EXHIBITS:

- Exhibit P1 PHOTOSTAT COPY OF THE LETTER ISSUED BY THE BANK TO THE PETITIONER ON 30.3.2019.
- Exhibit P2 PHOTOSTAT COPY OF THE JUDGMENT IN WPC 4190/2020 DATED 12.03.2020.
- Exhibit P3 PHOTOSTAT COPY OF THE DATED 28.05.2020 ISSUED BY THE BANK COMMUNICATION.
- Exhibit P4 PHOTOSTAT COPY OF THE COMMUNICATION TO THE BANK DATED 15.06.2020.
- Exhibit P5 PHOTOSTAT COPY OF THE COMMUNICATION TO THE BANK DATED 25.06.2020 ISSUED TO THE BANK.
- Exhibit P6 PHOTOSTAT COPY OF THE COMMUNICATION ISSUED BY THE 1ST RESPONDENT DATED 26.06.2020.
- Exhibit P7 PHOTOSTAT COPY OF THE JUDGMENT OF THE HONOURABLE GUJARAT HIGH COURT IN SCA NO. NO.17805 OF 2016 DATED 09.03.2018.
- Exhibit P8 PHOTOSTAT COPY OF THE JUDGMENT IN WPC NO.13605/2020 DATED 10.01.2022.
- Exhibit P9 PHOTOSTAT COPY OF THE REPRESENTATION DATED 04.10.2021.
- Exhibit P10 PHOTOSTAT COPY OF THE WRITTEN SUBMISSION MADE BY THE PETITIONER ON 13.05.2022.
- Exhibit P11 PHOTOSTAT COPY OF THE COMMUNICATION TO THE 3RD RESPONDENT DATED 18.05.2022.
- Exhibit P12 PHOTOSTAT COPY OF THE WRITTEN SUBMISSION FILED BY 3RD RESPONDENT DATED 18.05.2022.
- Exhibit P13 PHOTOSTAT COPY OF THE REPLY SUBMISSIONS FILED BY PETITIONER.
- Exhibit P14 PHOTOSTAT COPY OF THE ORDER ISSUED BY THE 4TH RESPONDENT DATED 08.06.2022.

RESPONDENTS' EXHIBITS

- Exhibit R3 (a) TRUE COPY OF THE CIRCULAR BEARING NO. DBOD. NO. BP.BC.81/21.01.040/95 DATED JULY 28, 1995.