

Uday S. Jagtap

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 16841 OF 2021

M.S. Ambegaonkar & Anr.

.. Petitioners

Vs.

Union of India & Ors.

.. Respondents

.....

Mr. Vishal Kanade a/w Ms. Kamini Pansare i/b V.M. Legal for the
petitioners

Ms. Niyati Merchant i/b MDP and Partners for respondent no.3

CORAM : K.K. TATED &

PRITHVIRAJ K. CHAVAN, J.J.

DATED : 3rd SEPTEMBER, 2021

P.C.

1. Heard learned Counsel for the parties.
2. By this petition under Article 226 of the Constitution of India, the petitioners are challenging the order dated 27th January, 2021 passed by the Wilful Defaulter Committee of IDBI Bank Ltd. declaring the petitioners as wilful defaulter.
3. During the course of argument, learned Counsel for the petitioners submits that in the present proceedings after issuing show-cause notice, they filed reply and personally appeared before the Wilful Default Committee on 15th November, 2018. At that time, the Wilful Defaulter Committee was comprising of Dy. MD Mr. K.P. Nair (Chaired) and Eds. Ms. Mythili Balasubramanian and Subroto Gupta.

He submits that though the hearing took place before the Wilful Defaulter Committee on 15th November, 2018, the committee passed their order on 27th January, 2021. He submits that bare reading of the last page of the order dated 27th January, 2021 shows that some other committee had passed the order consisting of J. Samuel Joseph (Chairman), Shri. B. Dasgupta, Member and Shri. Ravi Kumar, Member. He submits that to that effect, the petitioners have stated in paragraphs 25 and 27 of the petition, which read thus :-

*“25. It is submitted that the petitioners personally appeared on November 15, 2018 before the Wilful Defaulter Committee comprising of Dy. MD Mr. K.P. Nari (Chaired) and Eds Ms. Mythili Balasubramanian and Subroto Gupta (“WDC”) and inter alia informed them that the Respondent No.4 is not classified as a Wilful Defaulter and there is moratorium under the IBC therefore, Petitioners being Ex-whole time directors are not liable in their individual capacity under the RBI Master Circular. The Petitioners further submitted that the matter is sub-judice before the Bombay High Court thus, the wilful defaulter proceedings should not be proceeded with. Further, the petitioner no.2 vide letter dated November, 15, 2018 apprised WDC with the relevant facts of the case and sought withdrawal of the wilful defaulters proceedings. Hereto annexed and marked as **Exhibit ‘G’** is the copy of the letter dated November, 15, 2018.*

27. Pursuant to the personal hearing, WDC passed the impugned Order dated January 27, 2021 thereby declaring the Petitioners and another former director of Respondent No.4 as wilful defaulters under the grounds of diversion of funds

*and siphoning off of funds. Hereto annexed and marked as **Exhibit 'H'** is a copy of the Impugned Order dated January 27, 2021. It is pertinent to note that the Impugned Order was passed after more than 2 years after the personal hearing was conducted. Further, the WDC committee who had conducted the personal hearing on November 15, 2018 was different and the Impugned Order is signed by some other wilful defaulter committee ("**New WDC**"). It is pertinent to note that in the Impugned Order the New WDC failed to substantiate the delay in passing the Impugned Order. Also, it seems that the New WDC passed the Impugned Order without taking into consideration the submissions made by the Petitioners at the personal hearing therefore, the possibility of misjudgment cannot be ruled out. Further, from the actions of the Respondent No.3 it is evident that the act of passing the Impugned Order after a prolonged period without granting the petitioners a fresh opportunity of being heard, is nothing but an afterthought and the same is done with the sole intention to harass and tarnish the reputation of the Petitioners. The Impugned Order is in clear contravention of law, justice, equity and good conscience."*

4. The learned Counsel for the petitioners submits that on the basis of these facts, only the impugned order dated 27th January, 2021 is required to be set aside.
5. On the other hand, the learned Counsel appearing on behalf of respondent no.3 – IDBI Bank Ltd. submits that she requires some time to file their reply. She further submits that as per the procedure, against the order dated 27th January, 2021 passed by the Wilful Defaulter Committee, the

petitioners have already filed representation before the Review Committee in the month of April, 2021. She submits that the said representation is pending for hearing and final disposal on its own merits, therefore, there is no question of entertaining the present writ petition.

6. We heard learned Counsel for both the sides. It is to be noted that admittedly in the present proceedings, hearing of show-cause notice took place on 15th November, 2018 before the Wilful Defaulter Committee but the order dated 27th January, 2021 passed by the Wilful Defaulter Committee, consisting of other members. This itself can be a ground for setting aside the said order. But as the advocate for respondent no.3 requires some time to verify the facts, the following order is passed :-

ORDER

- (i) Liberty is granted to respondent no.3 to file their reply on or before 7th September, 2021 with copy to other side.
- (ii) Matter to appear on board on 9th September, 2021.
- (iii) Till the next date, operation and implementation of the impugned order dated 27th January, 2021 passed by the Wilful Defaulter Committee of IDBI Bank Ltd. being Order No.WDC/38/(FY21)/EPCCIL, is stayed.

(PRITHVIRAJ K. CHAVAN, J.)

(K.K. TATED, J.)