(2008) 04 P&H CK 0078

In the Punjab And Haryana At Chandigarh

Bharaj Industries APPELLANT

Vs

Punjab Financial Corporation and Another RESPONDENT

Date of Decision : 10-04-2008

Acts Referred:

Citation : AIR 2008 P&H 175 : (2010) 3 CompLJ 101 : (2008) 3 PLR 161

Hon'ble Judges : Satish Kumar Mittal, J;Rakesh Kumar Garg, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Rakesh Kumar Garg, J.—This judgment will dispose of Civil Writ Petition Nos. 11385 and 11413 of 2007 as similar questions of law and facts are involved in both the cases. However, the facts are noticed from CWP No. 11385 of 2007.

2. The petitioner was sanctioned a term loan of Rs. 6,50,000/- by the respondent-Corporation vide its letter dated 31.12.1996 (Annexure P-1). The availed loan amount by the petitioner could not be repaid due to unavoidable circumstances of the petitioner. The account of the petitioner was declared (NPA) by the respondent-Corporation. The respondent-Corporation floated One Time Settlement (OTS) scheme for settlement of loan. The case of the petitioner was also considered by the respondent Corporation for One Time Settlement for which letter dated 14.6.2003 (Annexure P-2) was issued. The petitioner was advised by the respondent-Corporation that his loan account has been settled at a tentative settlement amount of Rs. 5,51,986/- subject to audit and approval by the Settlement Committee. Through the said letter, the petitioner was also advised to deposit 10% of the above approximate settlement amount. Admittedly, the account of the petitioner was settled at a sum of Rs. 5,55,000/- by the respondent-Corporation in its meeting held on 6.8.2003. The petitioner deposited 10% of the OTS amount and as per this scheme the remaining amount of the OTS was to be deposited within two years in 23 equal monthly instalments. As per the averments made by the petitioner, he started making the repayment as per the settlement approved by the respondent-Corporation. The

petitioner has also placed reliance on the settlement of account (Annexure P-4) in which it has been shown that on 24.10.2006, the petitioner had paid the total amount of OTS and his settlement of account shows ''Nil amount'' due against him. It is the further case of the petitioner that the total OTS amount was to be deposited upto 31.7.2005. However, due to heavy losses suffered by him, there was delay in making the regular payments as per the Schedule and there was some delay in repayment of the total settlement amount. However, the petitioner was allowed by the respondent-Corporation to deposit the OTS amount even after the expiry of the period and was assured by the officials of the respondent-Corporation that the period of delay will be regularized. However, the petitioner was shocked to receive a letter dated 15.5.2007 (Annexure P-3) from the respondent-Corporation informing the petitioner that the OTS of the petitioner has been cancelled and he was directed to make payment of an outstanding amount of Rs. 6,54,257/- with further interest from 1.2.2007. The petitioner has challenged the said action of the respondent-Corporation on the ground that the same is illegal, arbitrary and against the well settled principles of law.

3. The writ petition has been contested by the respondent-Corporation by filing a written statement admitting therein that under the OTS scheme the account of the petitioner was settled at Rs. 5,55,000/- which was to be paid upto 30.4.2005. However, the petitioner failed to make the payment of entire OTS amount within the stipulated period and there was a delay of more than one year, when the petitioner cleared the entire OTS amount on 24.10.2006. It is the further case of the respondent-Corporation that the case of the petitioner for condoning the delay in making the payment of the entire OTS amount was considered by the Executive Committee in its meeting held on 29.8.2007 for condonation of delay. However, the Committee resolved to decline ''the proposal of condonation of delay in view of the policy decision taken by the Board of Directors in its meeting held on 7.3.2007 on the subject that the condonation of delay of more than one year will not be allowed for the payment of OTS amount henceforth and therefore, keeping in view the said decision of the Board of Directors dated 7.3.2007, the Executive Committee of the respondent-Corporation declined to condone the delay in the case of the petitioner and the petitioner was informed regarding this decision vide registered letter dated 20.9.2007. Since the petitioner has not paid the One Time Settlement amount within the stipulated period, the OTS stood cancelled and the petitioner is liable to pay the total amount recoverable from him as per the mortgaged deed signed by him and as per the calculation of the respondent-Corporation, the outstanding amount w.e.f. 1.11.2007 is Rs. 7,70,652/- against the petitioner.

4. We have heard learned Counsel for the parties and perused the record.

5. During the proceedings before this Court on 3.3.2008, this Court passed the following order:

During the course of hearing, it appears that account of the petitioner was settled for an amount of Rs. 5,51,986/- under the OTS Scheme, which was sanctioned on 14.6.2003. Under the said OTS, the petitioner made the payment, which was accepted without any protest. Ultimately, the petitioner cleared all the outstanding amounts as per the said OTS, as is clear from the account statement (Annexure P-4) issued by the respondent-Corporation. After making the entire payment, the respondent-Corporation asked for an amount of Rs. 6,54,257/- from the petitioner on the ground that subsequently, because of the default committed by the petitioner in the year 2003. It is a matter of fact that before claiming Rs. 6,54,257/-, the petitioner was never informed that his OTS sanctioned in the year 2003 was cancelled in the year 2007 for the alleged default committed in the year 2003.

Counsel for the respondent-Corporation is directed to file an affidavit of MD explaining as to why the amount was accepted from the petitioner without informing him about any default committed by him in the payment under the OTS scheme; and why the matter regarding cancellation of the OTS was kept pending for such a long period; and why the OTS was cancelled after accepting the entire payment under the aforesaid OTS Scheme, as it appears to us that the respondent-Corporation has cleverly devised a method for passing the cancellation order after accepting the entire amount under the OTS.

6. In pursuance of this order, an affidavit dated 1.4.2008 was filed by Sh. G. Vajralingam, Managing Director, Punjab Financial Corporation, Sector 17-B, Chandigarh. In the said affidavit, the respondent-Corporation has tried to justify its action by placing re liance upon Annexures A-1 to A-4 dated 19.10.2004, 2.2.2005, 18.2.2005, 28.11.2005 respectively, attached with this affidavit vide which the respondent-Corporation has asked the petitioner to clear his dues in terms of the OTS scheme, otherwise the Corporation shall take legal action against him. However, none of the letters suggest that the respondent-Corporation has ever issued a notice to the petitioner informing him that the OTS scheme in his case has been cancelled. Even otherwise, the affidavit filed by the Managing Director of the respondent-Corporation is in contradiction of the earlier stand taken by the respondent-Corporation in its written statement. In the written statement, it has been categorically stated by the respondent-Corporation that the case of the petitioner for condonation of delay in deposit of the entire One Time Settlement amount was considered by the Executive Committee in its meeting held on 29.8.2007 which declined the request of the petitioner for condoning the delay in terms of the decision dated 7.3.2007 of the Board of Directors and the petitioner was conveyed the said decision vide registered letter dated 20.9.2007, whereas in the affidavit dated 1.4.2008 of the Managing Director, it has been stated that the case of the petitioner was placed before the Settlement Committee i.e. the Competent Authority in its meeting held on 14.3.2007 for condonation of delay and the Committee resolved to decline the proposal of condo nation of delay in view of the policy decision taken by the Board of Directors in its meeting held on 7.3.2007 and the petitioner was conveyed the said decision vide letter dated 15.5.2007 (Annexure P-3) so impugned by the petitioner in the present writ petition. Even otherwise, the

respondent-Corporation has not placed on record of the case the policy decision of the Board dated 7.3.2007 vide which a decision has been taken by the Board not to condone the delay of more than one year henceforth. The respondents have also not placed on record the letter dated 20.9.2007 decision of the Executive Committee dated 29.8.2007 in the case of the petitioner and the registered letter dated 20.9.2007 informing the petitioner regarding the decision of the Executive Committee as stated in the written statement. Moreover, in the affidavit filed by the Managing Director of the respondent-Corporation, no reasons have been given by the respondent-Corporation in terms of the order dated 3.3.2008 passed by this Court as to why the amount was accepted from the petitioner without informing him about any default having been committed by him in the payment under the OTS scheme and why the matter regarding cancellation of the OTS was kept pending for such a long period and why the OTS was cancelled after accepting the entire payment under the aforesaid OTS scheme. Even in the written statement and the affidavit filed by the respondent-Corporation, it has not been mentioned as to on which date the OTS has been cancelled in the case of the petitioner. The only fact which emerges from the stand of the respondent-Corporation is that the request of the petitioner for condoning the delay in repayment of OTS amount has not been accepted by the respondent-Corporation and there is no order for cancellation of the OTS scheme in the case of the petitioner and to recover the amount as per the terms and conditions of the agreement between the parties. There is no evidence on record to show that any such notice for cancellation of the OTS scheme was issued to the petitioner.

7. From the stand taken by the respondent-Corporation, it is also made out that the respondent-Corporation has a policy to condone the delay in such cases and in the past delay of more than one year in such cases was being condoned by the respondent-Corporation and from 7.3.2007 the Corporation has resolved not to condone the delay of more than one year in such cases. Even if this stand of the respondent-Corporation is accepted, then also the petitioner is entitled to the condonation of delay in making the entire OTS amount as he had deposited the entire OTS amount on 24.10.2006 i.e. prior to 7.3.2007. No reasons have been given by the respondent-Corporation that why his case was not considered by the respondent-Corporation for condonation of delay prior to the resolution dated 7.3.2007 passed by the Board of Directors. Thus, the action of the respondent-Corporation is wholly illegal and arbitrary, therefore, impugned notice Annexure P-3 is hereby quashed.

8. The account of the petitioner is liable to be settled by the respondent-Corporation as per the OTS scheme. Since the entire OTS amount stands deposited by the petitioner on 24.10.2006, the respondent-Corporation is restrained from making any further demand in this regard. However, it is made clear that the petitioner was liable to clear the entire OTS amount on 30.4.2005 and there is delay in making the entire payment which has been made admittedly on 24.10.2006, therefore, the petitioner is liable to pay simple

interest at the rate of 12% per annum for the balance OTS amount paid after 30.4.2005 till the date of payment i.e. 24.10.2006. Accordingly, the respondent-Corporation may work out the said amount and inform the petitioner of this amount through registered post and the petitioner shall pay the said amount within one month on receipt of such information from the respondent-Corporation.

Both the writ petitions are allowed in the aforesaid terms.

