
(2007) 04 P&H CK 0033
In the Punjab And Haryana At Chandigarh

Bharat Bhushan	Vs	APPELLANT
State Bank of India and Another		RESPONDENT

Date of Decision : 20-04-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2008) 2 BC 530

Hon'ble Judges : Rajesh Bindal, J;M.M. Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajesh Bindal, J.—By filing the present petition under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for issuance of a direction to the respondents for consideration and approval of offer for one-time settlement made by him as per policy framed by the Reserve Bank of India.

2. Briefly the facts, as noticed in the petition, are that against a cash credit facility availed by Anmol Agro India Ltd. (for short "the loanee") from State Bank of India (for short "the Bank") on January 27, 1988, the petitioner stood as guarantor to secure the loan. The petitioner mortgaged his immovable property situated at Kaithal. The initial cash credit facility allowed to the loanee was Rs. 50 lakh. However, it was later on extended to Rs. 2.60 crores. The petitioner was a guarantor to the extent of original limit granted to the loanee. Due to non-payment of the loan raised by the loanee, the Bank filed an application before the Debts Recovery Tribunal (for short "the DRT") for recovery of Rs. 3,64,08,131.92. Keeping in view the terms of the guarantee deed signed by the petitioner, a decree of Rs. 58,00,350.92 was passed against the petitioner as guarantor. In pursuance to recovery certificate; the mortgaged property of the petitioner was auctioned for Rs. 30,12,000/-:

3. The proceedings of auction are yet to attain finality as in the objections filed by me petitioner, the sale was set aside by the Debts Recovery Tribunal against

which further appeal, filed by the auction-purchaser before the Debts Recovery Appellate Tribunal, is pending. The claim made in the petition is that in terms of one-time settlement scheme formulated by the Reserve Bank of India, which is binding on all public sector Banks, the petitioner is entitled to settlement of balance of his due under the scheme. Copy of the guidelines issued by the Reserve Bank of India on September 3, 2005, is placed on record as Annexure P1. The proposal made by the loanee under the signature of the petitioner for one-time settlement on September 5, 2005, is also placed on record by the petitioner as Annexure P2. The petitioner has further referred to Chapter 27 of the policy circulated by the Reserve Bank of India, which provides for prudential norms on income recognition, asset classification and provisioning. Further, request made by the petitioner for one-time settlement on November 28, 2005, is also placed on record as Annexure P6.

4. In response to the petition, learned Counsel for the Bank submitted that both the policies, as are sought to be relied upon by the petitioner for one-time settlement of the dues against the petitioner are not applicable. He submitted that in terms of paragraph 2 of the guidelines issued by the Reserve Bank of India on September 3, 2005, it is categorically provided that the same are not applicable in case of wilful default, fraud and malfeasance. Relevant part thereof is extracted below:

The guidelines will not, however, cover cases of wilful default, fraud and malfeasance. Banks shall identify cases of wilful default, fraud and malfeasance and initiate prompt action.

5. By referring to the findings recorded by the Tribunal, in the order passed by it, it was submitted that in the case in hand the loanee had played a fraud for which an FIR was also lodged and the matter was under investigation through Central Bureau of Investigation. The relevant facts noticed by the Tribunal in its order dated May 28, 2002, are extracted below:

During the currency of the account, it is alleged that defendant No. 2 presented on March 2, 1998, three cheques issued by M/s. Rice and General Mills, Kaithal and drawn on Central Bank of India, Kaithal. Defendant No. 2 assured and induced the Bank to pay the amount against those cheques as sufficient balance was available in the account of the drawer firm, which was further stated to be their own firm only. Against the said cheques, plaintiff-Bank released Rs. 260 lakh by crediting the same in the account of defendant No. 1. On the same date, defendant No. 2 issued four cheques, copies of which are enclosed as Exhibits A21 to A24 and the entire amount was withdrawn. On March 2, 1998, the cheques were returned with the memo of "insufficient funds" in the account of the drawer. It is further alleged that defendant Nos. 1 to 4 knew well about the insufficiency of the balance in that account and thus they wrongly induced the Bank and thereby the Bank was cheated. A first information report was also lodged with the police station, Kaithal, which was being investigated by Central Bureau of Investigation, New Delhi under the directions of the Hon'ble Punjab

and Haryana High Court.

6. By referring to terms of eligibility in Annexure P3, guidelines issued by the Reserve Bank of India in 1982, it was submitted that as per eligibility criteria laid down therein, it was mentioned that the same was applicable only in the case of multiple banking accounts/syndication/consortium accounts with outstanding exposure of Rs. 20 crores and above by Banks and institutions and the same does not apply to accounts involving only one financial institution or one Bank. Learned Counsel for the Bank has further referred to a circular issued by the Bank on January 10, 2006, and submitted that as per the latest guidelines in the accounts where decrees have already been passed and recovery certificates issued, the same will not be covered under the Reserve Bank of India one-time settlement scheme.

7. We have heard learned Counsel for the parties and with their assistance perused the paper book.

8. Learned Counsel for the petitioner at the time of arguments could not dispute the factual and legal position as submitted by learned Counsel for the Bank to the effect that one-time settlement scheme sought to be relied upon by the petitioner are, in fact, not applicable to him. It could not be disputed that loanee in the present case had committed fraud with the Bank and the petitioner stood guarantor for part of the sum advanced to the loanee. Further, he could not dispute that in terms of the eligibility criteria laid down in 1982, the loanee was not entitled to any benefit as the same did not apply to the loans due from a single institution/Bank and still further even as per the latest guidelines issued by the Bank the cases where the decrees have already been passed by the Tribunal, policy of one-time settlement was not at all applicable.

9. Faced with this situation, the only contention raised by learned Counsel for the petitioner is that this Court in exercise of equity jurisdiction should come to the rescue of the petitioner, who has already lost his property in the process, the same having been sold by the Bank for recovery of amount due from the petitioner as per the decree. The contention raised by the petitioner is not at all convincing. Under Article 226 of the Constitution of India, this Court does not exercise any power to waive off loans raised by the parties or liabilities incurred by the guarantors of the loan raised, that too, in cases where the decrees have been passed. The policy sought to be relied upon by the petitioner is not applicable to him)

10. In this view of the matter, we do not find any merit in the present petition. Accordingly, the same is dismissed.