(2016) 03 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 7159 of 2013

Gyankund Trust APPELLANT

Vs

PNB and another RESPONDENT

Date of Decision : 16-03-2016

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2016) 3 PLR 106

Hon'ble Judges : Rakesh Kumar Jain, J.

Bench : Single Bench

Advocate : Mr. Harsh Aggarwal, Advocate, for the Appellant; Mr. Arvind, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Kumar Jain, J. (Oral) - The petitioner-Trust applied for sanction of loans such as Term Loan, Over Draft Facility from the respondents from time to time. The first Term Loan for Rs. 4 crores was sanctioned on 11.07.2007. It was followed by many other term loans which were sanctioned from time to time.

2. On 5.10.2012, all the existing loans with the respondent Bank were reviewed and fresh sanction letter was issued by enhancing the Over Draft Facility to the extent of Rs. 400 Lacs. By including the said amount and the Term Loan, the total sanction was of Rs. 1709.29 Lacs. The property of the petitioner-Trust and other properties of its relation were kept as security.

3. The petitioner-Trust has alleged that it has paid Rs. 44,36,922/- which includes the loan processing charges, annual review charges and other bank charges levied by the respondent-Bank. The petitioner-Trust closed all the loan accounts on 4.02.2013 much before the period for which the loan was sanctioned. However, respondent No. 3 issued letter to the circle head office as well as to the petitioner-Trust by putting a lien on the credit balance accounts on the pretext of debiting 2% on account of prepayment charges qua loan account.

So much so the lien was also made on the FDRs and the current accounts of the petitioner-Trust maintained with the respondent-Bank and the respondent-Bank informed the petitioner-Trust through E-mail that they have already recovered Rs. 14 lacs from the current accounts and further requested to deposit a further sum of Rs.19,38,300/- within 10 days failing which the FDR kept will be prematurely cancelled and its proceeds would be applied towards prepayment charges.

4. Aggrieved against the said action of the respondent Bank, the petitioner-Trust has preferred this petition in which the prayer has been made to quash the orders/letters of the respondent-Bank issued vide Annexure P-11 dated 8.02.2013, Annexure P-13 dated 22.03.2013 and Annexure P-14 dated 29.03.2013 and also charge of 2% as prepayment charges recovered by the respondent-Bank as illegal.

5. Counsel for the petitioner-Trust has submitted that in none of the sanctioned letter, the respondent has specifically mentioned about 2% prepayment charges. It is also submitted that the petitioner-Trust has arranged some money from his own sources and some money raised as loan from Kotak Mahindra Bank to pay off all the outstanding dues of the respondent-Bank much before the expiry of the term of the loan. He has relied upon LA Circular No. 76 dated 22.06.2011 to contend that no repayment charges are to be levied, if it is not incorporated in the sanction letter by the respondent-Bank and in case, it is omitted to be mentioned in the sanction letter that there was no agreement between the parties in this regard. He also relied upon a decision of the Delhi High Court in the case of DLF Limited v. Punjab National Bank, 2011(8) R.C.R.(Civil) 1645 and the RBI Guidelines dated 7.05.2014 in support of his case.

6. On the other hand, counsel for the respondent has submitted that 2% prepayment charges are deducted or being asked from the petitioner-Trust on the basis of LA Circular No.76 of 2011 because the petitioner-Trust has raised the loan from another bank to square off the loan raised from the respondent-Bank. However, he has been very fair to the Court at-least in conceding that prepayment charges is not mentioned in any sanction letter issued to the petitioner-Trust at the time of loan was sanctioned and there was no agreement between the parties in this regard.

7. I have heard both the learned counsel for the parties and perused the available record.

8. The only issue in this case is that "as to whether 2% prepayment charges can be asked by the respondent-Bank on the payment of the entire dues before the due date?"

9. In order to search the answer of this question, it would be relevant to refer to LA Circular No. 76 dated 22.06.2011 which reads as under:-

"Prepayment charges:

In order to dissuade the Borrowers from shifting to other banks, pre-payment charges @2% on the outstanding pre-paid, are to be levied in case of all Term Loans sanctioned on or after 01.04.2004, in respect of the borrowers who shift to other banks by repaying the loans. However, no prepayment charges are to be levied in the following cases:-

(i) Where the loans are prepaid by the borrowers from their own sources;

(ii) Where the borrower shift to other bank within 30 days from the date of issuance of circular for upward revision in the rate of interest to be charged in his account or change in other terms of sanctions.

Branches while conveying the sanction to the borrower(s) in respect of term loan(s) sanctioned, should incorporate about the levy of pre-payment charges in the sanction letter. Branches to ensure that term loan document should contain the clause to the above effect and in case the same is not available in the term loan document, supplementary agreement as per Annexure P-IV be obtained."

10. A bare reading of the above suggests that the prepayment charges cannot be asked for until and unless it is made part of the sanction letter and in case, it is not made part of the sanction letter at the time when the loan is sanctioned, the parties can still bind themselves by a supplementary agreement. In the present case, however, both the things are conspicuous by its absence in as much as neither there is any provision regarding the prepayment charges in the sanction letter nor there is any supplementary agreement in this regard between the parties purported to have been executed at the instance of the bank. In the case of DLF Limited (supra), a similar issue was there regarding prepayment charges. The observation of the Court are as under:-

17. The RBI vide its guidelines dated 25th November, 2008 did provide that loan application forms in respect of all categories of loans should include information about fees/charges, if any, payable inter alia for pre-payment options and any other matter which affects the interest of the borrower, so that a meaningful comparison with the terms and conditions offered by other banks can be made and an informed decision can be taken by the borrower. It also declared that levying such charges subsequently without disclosing the same is an unfair practise. Similarly, the guidelines of 12th November, 2010 reiterated the necessity for disclosure of all charges including of pre-payment options.

29. The petition therefore succeeds and is allowed. The demand of the respondent Bank on the petitioner for pre-payment charges of Rs.20 crores on the loan subject matter of this writ petition is found to be without any W.P.(C) 8520/2010 Page 30 of 32 basis and is quashed. Resultantly, the respondent Bank also stands restrained from threatening actions in pursuance to the said demand. The respondent Bank is also directed to within six weeks of today return to the petitioner the security placed by the petitioner with the respondent Bank for repayment of the loan and which loan already stands re-paid. Upon default by the respondent Bank in so releasing the security within the time aforesaid, the

petitioner, besides other remedies shall also be entitled to interest @ 1% per annum on the value of the security. The petitioner is also awarded costs of Rs.20,000/- of this petition payable by the respondent Bank within six weeks aforesaid."

11. Otherwise, also in the Guidelines of the RBI dated 7.05.2014 it is specifically mentioned that "it was indicated that in the interest of their consumers, banks should consider allowing their borrowers the possibility of prepaying floating rate term loans without any penalty. Accordingly, it is advised that banks will not be permitted to charge foreclosure charges/pre-payment penalties on all floating rate term loans sanctioned to individual borrowers, with immediate effect."

12. In any case, keeping in view the fact that there is no agreement between the parties in so far as 2% prepayment charges are to be recovered in case the borrower is interested in for closing his loan account prematurely, the said amount cannot be charged by the bank as it is provided itself in the LA Circular No. 76 of 2011, referred to above.

13. In view of the aforesaid discussion, I have found merit in the present petition and the same is hereby allowed. The impugned orders/letters Annexure P-11 dated 8.02.2013, Annexure P-13 dated 22.03.2013 and Annexure P-14 dated 29.03.2013 are hereby set aside. The amount i.e. Rs. 14 lacs which has been charged by the bank shall be refunded to the petitioner with the interest which is being charged by the bank within a period of 30 days.