

(2013) 09 P&H CK 0314
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3955 of 2011

Inder Surgical

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-09-2013

Acts Referred:

Citation : (2014) 2 PLR 377

Hon'ble Judges : Sanjay Kishan Kaul, C.J;Augustine George Masih, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, C.J.—The petitioner is a proprietorship concern engaged in the trading of surgical items. The petitioner was availing of the limits from its principal banker Punjab National Bank-respondent No. 4. It is the say of the petitioner that the respondent No. 3-Bank, through its representatives, approached the petitioner for advancing cash credit facilities to the petitioner and in terms thereof, the account of the petitioner with respondent No. 4 was to be taken over by respondent No. 3-Bank. The communication in this behalf was addressed by respondent No. 3-Bank to the petitioner on 22.06.2010, on which date the petitioner paid a sum of Rs. 1,79,238/- as processing fee to respondent No. 3-Bank for taking over of the cash credit account. It is the case of the petitioner that respondent No. 3-Bank actually did not take over the cash credit account and the petitioner was left high and dry with the processing fee being appropriated by respondent No. 2. This has resulted in communication dated 11.02.2011 of the petitioner to respondent No. 3-Bank in the following terms:-

With reference to the subject cited above, you have taken a cheque of Rs. 1,79,238/-, drawn on PNB Dhanas for processing fee for taken over of the CC Account but till date the account has not taken over by you, neither any efforts have been done by you, nor any communication was ever given to the bank but you have encashed the cheque which was given to you and you assured that the cheque is processing fee subject to the taking over the account. You are

therefore requested to refund the sum of Rs. 1,79,238/- and credit in my account, failing which will taken other necessary action in the matter.

2. There was no response, which resulted in the petitioner approaching the banking Ombudsman. On enquiry from the banking Ombudsman, respondent No. 3 sent a letter dated 15.02.2011 to the petitioner in the following terms:-

Sub: Your complaint dated 11.02.2010 regarding sanction ref. No. RO DEL/SME/862010-11.

Dear Sir,

Thank you for showing interest in our business banking services.

In response to your complaint to your regional office dated 11.02.2010 we would like to inform you that as per your request/application for extending credit facility, the bank had approved the limits and after the acceptance of all terms and conditions of sanction letter by your good-self, processing fees + service tax of Rs. 1,79,238/- was collected from you through, a cheque from your existing account.

As per your request all disbursal documents were executed by your good-self and facility was released. Later we came to know from you that your existing bank Punjab National Bank (at the time of take over of your existing limits) is not agreeing for your account to be taken over. We along with your good self had visited your existing bank Punjab National Bank multiple times to take over the limits, but all the visits were futile.

We hereby re-confirm that processing charges on the limits sanctioned is payable by the firm at the time of receipt of the credit arrangement letter. These charges are non-refundable even if the company/firm do not avail the credit facilities, or avail only partially.

3. The present writ petition under Article 226 of the Constitution of India has been filed by the petitioner, as there was no satisfactory resolution of the dispute, seeking quashing of the letter dated 15.02.2011 and seeking refund from respondent No. 3 of the amount paid towards the processing charges along with interest.

4. The sole defence raised by respondent No. 3-Bank is that they actually processed the application of the petitioner and kept the pay orders ready but it is the petitioner who asked the matter to be kept on hold. It is their further say that they approached even the respondent No. 4-Bank, which also refused to let the debt being taken over.

5. On the other hand, the respondent No. 4-Bank has denied this stand by categorically stating that no representatives of respondent No. 3-bank have ever approached them.

6. We may notice that in pursuance to the pleadings, respondent No. 3-Bank was

called upon and has filed on record the pay orders prepared in respect of the loan account. This bears an endorsement "P.O. cancelled as per mail". However, no mail of the petitioner has been placed before us but only a communication dated 29.06.2010 addressed by respondent No. 3-Bank to respondent No. 4-Bank.

7. The respondent No. 3-Bank has also raised a preliminary objection about the maintainability of the writ petition on account of the fact that it is a private bank. However, learned counsel for the petitioner has pointed out that the respondent No. 3-Bank is a Scheduled Bank governed by the Reserve Bank of India Act, 1934 and has specifically been enlisted as a Scheduled Bank in the 2nd Schedule and is governed by the provisions of the Banking Regulation Act, 1949. The view taken by a Division Bench of this Court in CWP No. 2250 of 2012, M/s A-One Mega Mart P. Limited and Others Vs. HDFC Bank and Another, , in support of this contention has been referred to.

8. On hearing learned counsel for the parties, we are of the view that taking into consideration the nature of functioning of respondent No. 3-Bank, which has been governed by the Banking Regulation Act, 1949, and being a Scheduled Bank in the 2nd Schedule of the Reserve Bank of India Act, 1934 in the context of the judgment referred to aforesaid, it cannot be said that the writ petition would not be maintainable.

9. Now coming to the controversy in question, respondent No. 3 cannot be permitted to get away by just contending that disputed questions of fact are raised. The nature of transaction as such is that they would be evidenced by documentation. The respondent No. 3-Bank claims that it is the petitioner who asked the matter to be kept on hold. No document in support thereof has been filed. Again respondent No. 3-Bank claims that respondent No. 4-Bank did not permit the account to be taken over, a fact simply denied by respondent No. 4-Bank. The petitioner has pointed out that loan account in fact was taken over by the IndusInd Bank within eight days. The Pay Orders bear the endorsement, as noticed aforesaid, that they had been cancelled as per mail but no copy of any mail has been filed on record. It appears that excuses are being made for the inefficiency of respondent No. 3 and on the pretext that processing charges are non-refundable, the amount is refused to be handed back. If the loan had been processed as claimed by respondent No. 3-Bank and what was required to be done, was so done, then only would the occasion arise for the amount to be nonrefundable, if the petitioner still did not avail of the loan facilities. However, as noticed aforesaid, the pleas of respondent No. 3 appear to be not supported by any document whatsoever. We are thus of the view that the petitioner is entitled to the refund of the amount of processing charges of Rs. 1,79,238/- and the said amount be refunded to the petitioner within 30 days from today. In case of delay, the amount would carry interest @ 12% P.A. simple interest from the date of deposit till the date of payment.

The writ petition is accordingly, allowed leaving the parties to bear their own

costs.