
(2005) 08 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6968 of 2004

Jay Kay Synthetics

APPELLANT

Vs

Punjab Financial Corporation and Another

RESPONDENT

Date of Decision : 24-08-2005

Acts Referred:

Citation : AIR 2006 P&H 73 : (2006) 4 BC 128 : (2006) 2 JCR 258 : (2006) 142 PLR 488 : (2005) 4 RCR(Civil) 557

Hon'ble Judges : D.K. Jain, C.J.; Hemant Gupta, J

Bench : Division Bench

Advocate : N.S. Bawa, for the Appellant; Salil Sagar and K.S. Rekhi, for the Respondent

Final Decision : Allowed

Judgement

Hemant Gupta, J.—Rule D.B.

2. With the consent of the counsel for the parties, the writ petition is taken on Board for regular hearing.

3. The petitioner, a partnership firm, has invoked the writ jurisdiction of this Court aggrieved by the inaction of respondent No. 1 in not releasing and handing over the original title deeds of the land even though the petitioner has settled all the accounts of the said respondent.

4. It is the case of the petitioner that it had availed term loan from respondent No. 1 to the tune of Rs. 90 lakhs till the year 1997. The petitioner had deposited original title deeds of its property with the said respondent as collateral security. On 28.11.1997, a tripartite agreement was entered between the parties to the writ petition. Canara Bank has sanctioned credit facility under the said agreement up to a limit of Rs. 50,00,000/- to the petitioner on the condition that the borrower shall mortgage the land by way of second charge, the first charge being in favour of respondent No. 1 against the repayment of the dues of the bank under the aforesaid credit facility.

5. It is further pleaded that in terms of one time settlement scheme prepared by respondent No. 1 (hereinafter referred as Corporation) in pursuance of the guidelines of Reserve Bank of India, the petitioner cleared the entire dues of the Corporation against the Term Loan Account with the payment of Rs. 6,00,000/- on 9.9.2003. The petitioner has sent another sum of Rs.500/- towards the miscellaneous expenses as claimed by the Corporation vide letter dated 11.9.2003. While making the said payment through demand draft on 24.9.2003, the petitioner requested for the original title deeds of the land and no dues certificate so that the same could be handed over to Canara Bank. Later on the Corporation again communicated that a sum of Rs. 2,827/- is payable. The said amount was also paid through a cheque dated 5.11.2003. The title deeds were not released inspite of such payment and inspite of the communications dated 13.11.2003 and 21.11.2003 written for the said purpose. Since the title deeds were not being returned, the petitioner invoked the writ jurisdiction of this Court.

6. In the written statement filed on behalf of the Corporation, it disputed the claim of return of the title deeds inter alia on the ground that the bank has not obtained any approval from the Corporation which was to be obtained as per tripartite agreement. It was further stated that the partners of the firm namely, Narinder Kumar Jain and Devinder Kumar Jain are also Directors of the sister concern namely M/s. Roses Floriculture Ltd. The said partners as Directors of M/s. Roses Floriculture Ltd. have executed personal bonds of guarantee in favour of the Corporation. It was pointed out that the said company is defaulter of the Corporation for a sum of Rs. 3,22,61,731/- with further interest from 1.7.2004 in Account No. 1 and Rs. 1,38,18,921/- with further interest from 1.6.2004 in Account No. 2. It is, thus, claimed that the said partners who are directors of the said company are liable to pay the said amount on the basis of bond of guarantee executed by them. Therefore, the title deeds can not be returned to the petitioner.

7. The petitioner controverted the said stand of the Corporation by filing rejoinder wherein it was pleaded that M/s. Roses Floriculture Ltd. has taken loan from the Corporation by an independent instrument and deposited the title deed of the said company with the Corporation. It was pleaded that by no stretch of imagination, the Corporation can legally claim property of the petitioner which is separate independent concern and legal entity. The guarantee furnished by the directors is a limited guarantee enforceable against the assets of the company and not enforceable from the personal assets of the directors.

8. Mr. Rekhi, learned Counsel for the Canara Bank submitted that the title deeds are, in fact, required to be furnished to the Bank, as the charge of the Corporation stands satisfied and thereafter, the title deeds be remitted to the bank being second charge holder.

9. During the course of arguments, learned Counsel for the Corporation admitted that no legal proceedings have been initiated for the recovery of the dues against M/s. Rose Floriculture Ltd. Learned Counsel for the Corporation also could not

point out any Clause in the agreement or the guarantee whereby the assets owned by the petitioner or its partners could be retained as a collateral security for the repayment of the dues of the Corporation. It is not the case of the Corporation that the said property was subject matter of any charge of the Corporation for repayment of loan advanced to M/s. Roses Floriculture Ltd.

10. The petitioner has availed financial assistance by virtue of an agreement and has deposited title deeds towards the security for the repayment of the said financial assistance. Once all the dues of the Corporation arising out of the said agreement providing financial assistance had been paid, the action of the Corporation in not returning the title deeds is nothing but an abuse of the powers vested in the said Corporation. The borrower has paid the entire dues, and therefore, was entitled to the return of the title deeds and no dues certificate with due despatch. The Corporation has failed to act with due diligence causing avoidable harassment to the petitioner. The respondent Corporation has retained the title deeds almost for a period of 2 years even after the amount due was paid to the Corporation. The action of the Corporation in not returning the title deeds is wholly arbitrary, unreasonable and without any legal sanction.

11. In view thereof, we allow the writ petition with costs of Rs. 10,000/- and direct the Corporation Respondent No. 1 to remit the title deeds to respondent No. 2, i.e. Second charge holder within a period of one month from today.