(2011) 08 P&H CK 0043

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 741 of 2010

J.P. Commercial Complex — APPELLANT

Vs

State of Punjab and Another — RESPONDENT

Date of Decision : 18-08-2011

Acts Referred:

Citation : (2011) 08 P&H CK 0043

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.—The petitioner, who had offered to settle the loans outstanding to the Punjab Finance Corporation (PFC) under OTS Policy, later has resiled from the same, contending that the liability is of the PFC to pay to the petitioner inasmuch as he has already paid the amount in excess of what was liable to be paid. The writ petition came to be filed at a time when the petitioner did not make the payment as it was his undertaking in the OTS Scheme for payment of Rs.13,29,745/- and when the PFC withdrew the OTS concession, he has filed the petition stating that he was entitled to OTS and for finalization of the account as if it to suggest that his claim that money is due from the respondent should be accepted.

2. The respondent-PFC takes up a plea that there is a clear misunderstanding of the terms of the OTS and after undertaking to make the payment as per OTS, he cannot complain that any amount is due from the PFC to the petitioner. The withdrawal of the offer for settlement under OTS Scheme was, under the circumstances, perfectly justified.

3. To understand the controversy between the parties, it is necessary to reproduce the terms of the OTS Policy in so far as it is relevant for the petitioner''s loan account, which was for an amount of about Rs.5 lacs:

OTS amount: Outstanding principal, expenses plus interest as given below or principal plus expenses alongwith documented rate of interest from date of distursement till the cut off date less interest paid on reducing balance basis without adjustment against principal outstanding, whichever is lower.

xxxx xxxx xxxx

For loan above Rs.5 lacs:

a) Gen. Loan cases

Principal plus expenses plus 12% interest since beginning compounded half yearly.

b) AAIFR/BIFR case

Principal plus expenses plus 10% interst since beginning

compounded half yearly.

Loans where properties/assets acquired and sold by PFC.

Outstanding principal plus 10% of interest outstanding as On the last date of sale.

In no case the OTS amount will be less than the outstanding principal plus expenses.

(underlining mine)

4. Learned counsel for the respondent states that the petitioner''s contention that the PFC owns Rs.14,89,034.13 as per the Accounts Statement prepared by the Auditor is clearly wrong. The counsel points out to the fact that the OTS Scheme specifically contains a clause (that is underlined) that an OTS cannot be less than the outstanding principal plus the expenses. When such a clause exists, it is impossible for any one to contend that outstandings worked out with interest at a particular percentage to contend that as per OTS Scheme, any amount is due from the PFC to the petitioner. On the date of coming in to force of the scheme, the amount which was outstandig as principal was Rs.13,29,745/-and as per the undertaking given by the petitioner, it is clear that he was making a payment of Rs.2 lacs out of the entire amount calculated, and the remaining amount within a period of 90 days. This statement he has made in the following words:

We accept the OTS amount of Rs.13,29,745/-along with expenses, if any, with further interest as per policy. Out of which, we have already already paid Rs.2.00 lacs. The balance OTS amount will be paid as per payment of 90 days. However, we will submit the post dated cheques of the balance of OTS amount within a week''s time which will be replaced by draft within a period of 90 days. As we propose to pay the balance OTS amount within 90 days so we may be allowed 5% rebate as per policy also.

5. With a clear undertaking in the manner that he has given and in view of the specific clause which is part of the OTS Scheme that the OTS could not be less

than the outstanding principal plus expenses, there is no scope for contending that any amount is due from the respondent to the petitioner.

6. The petitioner has failed to avail of the terms of the OTS and therefore, the withdrawal by the PFC is perfectly justified. The writ petition is dismissed.