(2012) 03 P&H CK 0205

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 11282 of 2011

Kumar Hotels and Restaurants APPELLANT

Vs

Indian Overseas Bank and others RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 14

Citation : AIR 2012 P&H 167 : (2013) 2 BC 455

Hon'ble Judges : M.M. Kumar, J;Alok Singh, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—The instant petition under Article 226 of the Constitution of India has been filed by a proprietorship firm with a prayer for quashing the order dated 15.03.2011 (P-2), passed by the District Magistrate, Jalandhar and the order dated 18.06.2011 (P-3), passed by the Commissioner of Police, Jalandhar. In accordance with the aforesaid orders the application filed by respondent-Bank u/s 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short ''Securitization Act'') has been accepted and the police assistance has been extended to the Bank for taking over possession of the security furnished by the petitioner which included the building of the hotel. The other order (P-3) is virtually execution of the order dated 15.03.2011 with a direction if there is any order passed by the competent Court staying the order pertaining to the matter under consideration, the case may be returned to this office along with the order/directions of the Court and the police assistance may be provided. It is conceded as a fact that the petitioner filed an application on 22.06.2011 (P-4) for settlement of dues under the OTS Scheme of the Bank. The aforesaid application was necessitated on account of the fact that before the District Magistrate in proceedings u/s 14 of the Securitization Act an objection was raised that no offer for settlement has been made. The aforesaid offer made on 22.06.2011 was duly received by the Bank. On a pointed query made by the Bank, Mr. I.S. Bhatia, learned counsel for the Bank has submitted that the aforesaid OTS proposal submitted by the petitioner was rejected and the factum of rejection was communicated by Registered A.D. Letter to the petitioner on 30.06.2011. The rejection letter has been placed on record as ''Mark -A''. It makes interesting reading, which is as under :-

Sir,

Your OTS Proposal dt. 22.06.2011 Term Loan

We refer your OTS proposal dt. 22.06.2011 and order that your OTS proposal is not acceptable to the Bank. You are requested to repay the total outstanding amount along with undisputed interest immediately.

2. A bare perusal of the aforesaid rejection of the offer made by the petitioner would show that there is no iota of consideration of the offer made as the respondent-Bank is obliged by virtue of the OTS guidelines. The aforesaid guidelines have now been held to be statutory major and binding on the financial institution including Bank. In the case of Sardar Associates and Others Vs. Punjab and Sind Bank and Others, , in fact the stand of the respondent-Bank is that the petitioner is a willful defaulter and, therefore, the Bank is not obliged to consider the OTS offer. However, this was the precise reasons for rejecting the OTS offer in the judgment of Sardar Associates (supra). The willful default is a phrase devise by the respondent-Bank and the order in the letter dated 30.06.2011 would not meet the judicial approval of the Court because it does not contain any reason whatsoever. It only shows that the proposal is not acceptable which is for passing of the detailed reasons order, therefore, we quash the aforesaid letter dated 30.06.2011 and direct the respondent- Bank to consider the OTS offer made by the petitioner on 22.06.2011 in accordance with law laid down by Hon''ble the Supreme Court in the case of Sardar Associates (supra) and the proposal shall be disposed of within a period of two months from today. The order of the District Magistrate as well as the Commissioner of Police (P-2 & P-3) shall remain in abeyance and shall be subject to fresh determination of the Bank. The Bank shall not give effect to the order for a period of two weeks from the date of its communication to the petitioner.

3. Petition stands disposed of. A copy of this order be given dasti on payment of the ususal charges to the learned counsel for the parties.

