(2013) 04 P&H CK 0066

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No''s. 17264, 20553, 18958, 20253 of 2009 with C.W.P. No''s. 11490, 480, 13877, 7461, 12330, 13308, 4405 of 2010, C.W.P. No''s. 5801, 13468, 6638, 10235, 24453, 22769 of 2011, C.W.P. No''s. 417, 2399, 1340, 5267 of 2012, CRM No''s. M-3

Manohar Singh and Another — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 08-04-2013

Acts Referred:

Banking Regulation Act, 1949 — Section 35A
Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Constitution of India, 1950 — Article 21

Citation : (2013) 171 PLR 98

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : Mansur Ali and Mr. H.S. Deol, for the Appellant; Kulwant Kaur Kahlon for Respondent No. 1, Mr. Vikas Chatrath for Respondent No. 3-Bank and Ms. Kamini Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Narain Raina, J.—This order will dispose of 26 petitions as common questions of law and facts are involved in all these cases. For convenience, the facts are taken from CWP No. 17264 of 2009. Both the petitioners in this petition are engaged in business and work through establishments run in separate industrial plots in Industrial Focal Point, Mohali. They claim that they are victims of the 1984 riots in Delhi and elsewhere following the assassination of late Prime Minister Mrs. Indira Gandhi. After the riots, they say that they resettled in Punjab and have been issued Red Cards by the District Administration in proof of being riot victims. Both the petitioners and the petitioners in the 18 connected writ petitions took loans from either nationalized banks, private banks, cooperative banks and from non-banking financial institutions for different purposes, including credit facilities for running business, purchasing industrial plots, residential plots, flats, vehicles, machinery, goods etc. from different loaning institutions on different dates, after 30.6.1996.

2. In order to rehabilitate Sikh migrants who sadly became victims of the 1984 riots, the Government of Punjab and the Government of India formulated schemes to ameliorate their lot and bring them back to the mainstream of life, by providing easier facilities of raising loans from banking institutions to help them tide over the crisis. Some banking institutions, including the Punjab and Sind Bank initiated schemes on their own to help riot victims duly identified by the District Administrations wherever riot victims relocated through issuance of Red Cards as identity and proof for them to reap benefits especially provided to them. The Punjab and Sind Bank is stated to have issued a scheme in 1993.

3. The Government of India set up the Justice Nanavati Enquiry Commission to go into the various issues arising out of the unprecedented riots which broke out leaving many Sikhs without hearth and home and to live in fear. The report of the Commission was tabled in Parliament in 2005. As a sequel to the report, the Government of India constituted a Committee on 13.8.2005 to opine on relief measures and to advise it accordingly.

4. The plight of the victims of the Sikh community who were living in Delhi at the time of riots engaged the attention of the Supreme Court in Harjit Singh and others v. Union of India and others, (Writ Petition (C) No. 457 of 1988) decided on 17.12.1993. The petitioners before the Supreme Court were riot victims who had taken loans from banks and could not re-pay them for various reasons. They invoked Article 21 of the Constitution to protect their life and liberty while praying for directions to the respondents not to insist upon claiming any further amounts over the principal loans in the shape of onerous interest on defaulted repayment schedules etc. They said that if the Court did not come to their rescue they would remain in perpetual indebtedness. On 7.11.1989 in the pending writ petition, the Supreme Court passed an order on the statement of the learned Attorney General, Government of India that the banks will be advised to consider the case of such loans on its merits and to such relief as may be considered just, fair and reasonable based on the facts of each case. The Reserve Bank of India was requested to advise the banks accordingly. In pursuance of the orders of the Supreme Court, the Reserve Bank of India advised the banks through its Circular dated 23.12.1989 as follows:-

(i) The Banks should make a review of the credit facilities granted to all the November, 1984 riot affected borrowers taking into account their re-paying capacity, the operations in their accounts, the nature and type of the securities available, the present condition of the securities, other assets, if any, owned by them and all other relevant factors.

(ii) On the basis of the review, banks should decide the case of each loanee on merits and afford such relief as may be considered reasonable. The reliefs may include further extension of time for repayment of dues, entering into compromise arrangements and in cases where there are no reasonable chances of recovery of dues, write off of the amounts due from the borrowers concerned.

5. The Government of India decided to extend relief in deserving cases by way of reduction of interest on bank loans to 6% per annum in case of borrowers affected by 1984 riots. Accordingly, "Central Interest Subsidy Scheme for November, 1984 Riot Affected Borrowers" was prepared and issued by the Reserve Bank of India vide its Circular dated 9.9.1990. The Scheme formulated as found in the order of the Supreme Court contained the following features:-

(i) The banks shall charge interest at six per cent per annum on all eligible outstanding loans in a deserving case, as on 31st December, 1989, for the period from 1st November, 1984 if the loan is granted on or before 1st November, 1984 or from the date of grant of loan, if granted subsequently, to 31st December, 1989.

(ii) The borrower shall be advised by the bank in writing about the extent of relief provided in each account as also the balance outstanding in the accounts as on 31st December, 1989 and the date on which relief is provided.

(iii) The relief granted by the banks shall be reimbursed to the banks by the Central Government.

(iv) The entire interest that has accrued on the outstanding loan amounts after 31st December, 1989 shall be borne by the borrowers.

6. Thereafter, Interlocutory Application No. 4 of 1992 was preferred before the Supreme Court in the writ petition where a prayer was made that to classify victims of 1984 riots on the basis of those who took loans from banks as defined under the Scheme and those who took assistance from other financial institutions was not reasonable classification. A prayer was made for a direction to the Union of India and to the Reserve Bank of India to include all financial institutions in the definition of "bank", both State and Central for the purposes of the Scheme. The Supreme Court in its order dated 17.12.1993 took stock of the human problem before it and the plight of the riot victims and widened the scope of the Scheme to include financial institutions as well, in departure to the normal rule which the Court requires the parties to abide by the terms of the contract. The Debt Relief Scheme (Revised) for November 1984 Riot Affected Borrowers was promulgated on 29.12.1997. Under Clause 2(b) of the Scheme, the term "Bank" is defined as under:-

(b) "Bank" means a commercial bank, Regional Rural bank, State Cooperative Bank, Central Cooperative Bank, Primary Cooperative Society, State Land Development Bank or Urban Cooperative Bank, or a financial institution.

Explanation

Financial Institutions means the Industrial Development Bank of India, Industrial Credit & Investment Corporation of India Ltd., Industrial Finance Corporations and State Industrial Development Corporation in all the States, Union Territories and the National Capital Territory of Delhi. Primary Cooperative Society includes Primary Agricultural Credit Society, Large Sized Adivasi Multi-purpose Society, Farmers Service Society and Primary Industrial Cooperative Society.

7. Clause 2(c) defines "Effective Date" as under:-

(c) "Effective Date" loans 30th June, 1996 which shall cover all eligible loans disbursed upto and outstanding as on 30th June, 1996.

8. Clause 3 defines Relief and Extent as under:-

3. RELIEF AND EXTENT

(a) The lending bank/financial institution shall write off the eligible loans together with the outstanding interest, other expenses, if any, charged at the rate(s) applicable to such loans as per the Reserve Bank of India guidelines issued from time to time or the interest rate(s) charged by the concerned financial institutions, as the case may be, till 30th June, 1996. This amount of write off will be reimbursed to the concerned banks/financial institutions by the Ministry of Home Affairs, Government of India.

(b) The outstanding interest, other expenses, if any charged/debited in such borrowal accounts beyond 30th June, 1996, till the date of actual liquidation of the account shall also be written off by the lending bank/financial institution which, however, will not be reimbursed by the Government of India under the Scheme.

(c) After providing the relief as mentioned at 3(a) and 3(b) above, in the eligible loan accounts, the recovery proceedings, if any initiated earlier against such borrowers may be withdrawn/dropped by lending bank/financial institution.

(d) The total relief in the case of each borrower under the Scheme shall, in no case, exceed the aggregate amount outstanding in his various accounts as on the effective date. In other words, no relief by way of reimbursement to the borrower concerned shall be allowed in any case.

9. Clause 5 of the Scheme deals with adjustment of the loan accounts which reads as under:-

5. ADJUSTMENT OF LOAN ACCOUNTS

(a) Credits may be given in the eligible loan accounts of borrowers to the extent reimbursable from Government and the aggregate amount held in the account called "Receivable from the Government under Debt Relief Scheme (Revised) for November 1984 Riot Affected Borrowers", till the amount received from Ministry of Home Affairs, Government of India.

(b) The banks/financial institutions shall all write off the outstanding interest etc. charged/debited beyond 30th June, 1996 till the date of actual liquidation of the accounts simultaneously so that the accounts stand closed/adjusted. This amount shall however be borne by the lending bank/financial institution and shall be reimbursed by the Government.

10. A combined reading of the Clauses makes it manifest that it covers only such loans which were taken prior to 30.6.1996, the cut off date fixed under the Scheme and the outstanding interest, and other expenses, if any charged/ debited in such borrowal accounts beyond 30.6.1996, till the date of actual liquidation of the account shall be written off by the lending bank/financial institution. Clause 3(c) provides that after providing relief under Clause 3(a) and (b) in the eligible loan account, the recovery proceedings initiated earlier would be withdrawn and dropped by the lending bank/financial institution.

11. Mr. Mansur Ali, learned counsel for the petitioners submits that this Scheme should be implemented in favour of the petitioners. He relies on Section 35A of the Banking Regulation Act, 1949 to contend that the Reserve Bank of India which is a party respondent has the power to give directions in public interest and in the interest of banking policy and that it should be directed to exercise such powers over the respondent bank/financial institution to either write off the loans or to come in aid of the petitioners to save them from the quicksand of debt. Mr. Mansur AH would refer to the decision of this Court passed in FAO No. 5480 of 2012, the operation of which has been stayed by the Supreme Court by order dated 18.10.2012 in Sukhwinder Singh v. Punjab Financial Corporation, (Special Leave to Appeal (Civil) No. 32019 of 2012).

12. On the other hand Mr. Vikas Chatrath, learned counsel for the Bank has vehemently argued that the vires of the cut off date 30.6.1996 in the Scheme (P-9) has not been challenged. It would, therefore, be imperative to conclude that the parties are satisfied with the Scheme. Mr. Chatrath relies on State of Haryana and Others Vs. Jagroop Singh, , Dhani Ram Chaudhary Vs. State of Haryana and Another, and Balwinder Singh v. Punjab State Electricity Board, 2011(4) S.L.R. 732 (Para 4) to support the contention. He further contends that the petitioners had filed an earlier writ petition for removal of over-head electrical lines from their plot for which impediment they could not effectively use their industrial plots, and therefore, ran into debt and in default of loan, and they be estopped from claiming relief, in view of the law laid down by a Division Bench of this Court in Balwinder Singh (supra). The Division Bench relied on the Full Bench decision of this Court in Teja Singh v. U.T. Chandigarh, (1982)84 P.L.R. 161 in which it has been held that the principles of the CPC apply in writ jurisdiction. Therefore, the principles of Order 2 Rule 2 of the CPC would bar the petitioners from claiming relief in the present petition even assuming the Scheme was applicable to them. There is merit in the contentions of Mr. Chatrath. No such claim was made in the previous petition. It could have been. There is no challenge to the cut off date in this and connected cases. Indisputably the loans in all these cases were applied for after the cut of date- 30.6.1996 and, therefore the parties would be governed by contract.

13. The petitioners are borrowers from banks/financial institutions after the cut

off date i.e. 30.6.1996. The loans were not sought by them as riot victims. The Scheme (P-9) does not apply to them. There is, therefore, nothing in the Scheme to implement in favour of the petitioners. In CWP No. 4405 of 2010, it has been pointed out that a onetime settlement of Rs. 31.00 lacs was offered to settle the entire account, but that was not availed. This a material circumstance against them. The petitioners in this writ petition were aware that they could have no benefit of the Scheme, otherwise they would have relied on it while dealing with the respondent-Bank/Financial Institution at the stage of working out an OTS.

14. In some of these writ petitions, loans have been taken from non-banking financial companies as in CWP No. 6638 of 2011 and CWP No. 580l of 2011. The private banks are also involved. Such financial institutions are not covered under the Scheme even within the expanded definition, as a result of directions of the Supreme Court and consideration by the Reserve Bank of India in formulating the Scheme.

15. The Red Cards would not be available to the petitioners for purpose of loans or writing them off in these connected cases, but may be available to them for other purposes with which these petitions are not concerned. For the foregoing reasons, I do not find any merit in this and connected petitions and would dismiss them without any order as to costs. But while dismissing the petitions the respondent banks may deal with the petitioners especially for non-commercial loans in as sympathetic a manner as possible keeping in view that the petitioners are riot victims, since that fact has not been disputed before this Court.

