
(2020) 12 P&H CK 0407

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 22552 Of 2020 (O&M)

M/S Panwar Steels Limited And Another

APPELLANT

Vs

Indian Overseas Bank And Another

RESPONDENT

Date of Decision : 23-12-2020

Acts Referred:

Citation : (2020) 12 P&H CK 0407

Hon'ble Judges : Ajay Tewari, J;Rajesh Bhardwaj, J

Bench : Division Bench

Advocate : Sanjiv Gupta, C.S.Pasricha

Final Decision : Disposed Of

Judgement

Ajay Tewari, J

1. This petition has been filed for quashing the orders dated 3.4.2019 and 31.7.2019 passed by Debt Recovery Appellate Tribunal, New Delhi (for

short 'the Tribunal) (Annexure P-16 & P-17) as well as impugned sale notice dated 18.11.2020 issued by respondent Bank (Annexure P-20).

2. The ground taken by the learned counsel for the petitioners is the dismissal of the appeal filed by the petitioner was on account of the failure of the

petitioner to make pre-deposit. The case of the petitioners is that in the year 2011 the petitioners had entered into OTS with respondent No.1-bank

whereby the petitioners had to pay a sum of R.165 lakhs in full and final settlement of the debt. Admittedly, the petitioners did not make the payment

even by the extended period i.e. till 31st August, 2011. The respondent No.1-the bank had earlier filed an original application before the D.R.T. It is

the case of the petitioners that the petitioners had no knowledge of the pendency of that case but by 18th April 2012 the petitioners had made the

entire payment along with interest. However, by judgment dated 29th March 2012 the original application filed by respondent No.1-bank was allowed

and the petitioners were directed to pay an amount of Rs.4,55,79,728/- along with pendente lite and future interest at 12% from the date of the filing of

OA i.e. 22.5.2008 till realization. The petitioners came to know of this order later and filed appeal which was barred by delay. That appeal was

dismissed by the Tribunal by judgment and order dated 3.9.2014 on the ground of limitation. That order was challenged by the petitioners in this Court

by way of filing of CWP No. 21381 of 2014 and by judgment dated 20.3.2015 this Court set aside the order and directed the Tribunal to hear the

appeal on merits. It is thereafter that the Tribunal took up the appeal and by order dated 3.4.2019 directed as follows :-

The appellants are accordingly directed to make the pre-deposit of 50% of the amount of Rs. 4,55,79,728/- determined by the DRT to be recoverable

from the appellants herein. The appellants will be entitled to deduct from this, amount of rupees three crores paid to the Bank and 50% of the balance

amount shall be deposited with the Registry of this Tribunal within four weeks. Otherwise, the appeal will be liable to be rejected as not entertainable.

In case amount is deposited , the same shall be kept in a fixed deposit with a nationalised Bank for a period which would fetch maximum interest.

3. The petitioners did not deposit the said amount. The appeal was dismissed by impugned order and that is why the petitioners are before this Court.

4. The prayer made by the petitioners is that once the petitioners had made the entire amount of pending OTS along with interest and costs the bank

could not be entitled to take even a penny more, and in these circumstances, the appellate Tribunal erred in not granting complete waiver. As an

alternative, it is prayed that in the year 2014 when the appeal was filed the appellate Tribunal had the right to waive the pre-deposit up to 75% and

therefore, at least this indulgence should have been granted to the petitioners. He has ultimately prayed that this Court should direct the Tribunal to

hear the appeal without insisting the pre-deposit. On the other hand, learned counsel for the respondent who is present on advance notice has argued

that the Tribunal took an unduly charitable view of the petitioners because the amount of pre-deposit has to be ascertained as per the amount due on

the date and not the principal amount. He has argued that once the petitioners did not adhere to the financial discipline of the OTS no objection can be

taken regarding cancellation of the OTS by the bank.

5. In our considered opinion, the prayer cannot be countenanced. Even while deciding the earlier Civil writ petition (No. 21381 of 2014 (supra)) this

Court had observed as under :-

“13. It is true that in view of the failure to abide by the terms and conditions of the settlement, the respondent was at liberty to continue the

proceedings as well as to avail of any other remedy against the petitioners. The respondent, therefore, cannot be faulted for having proceeded with the

O.A. The same was allowed on 29.03.2012. The period of limitation to file the appeal expired on 15.05.2012. As we mentioned earlier, the appeal was

filed only on 13.05.2014 which was dismissed by the impugned order dated 03.09.2014.”

6. Be that as it may, that was an issue which was to be decided by the Tribunal. The issue before us is whether in the circumstances of the case the

petitioners can be exempted from making the pre-deposit. In the circumstances of the case, we do not find it to be a matter where this relief can be

granted to the petitioners. As has rightly been argued by the learned counsel for the respondents the appellate Tribunal could well have asked the

petitioners to make pre-deposit after considering the amount which was actually due as per the decree but the appellate Tribunal limited it only to the

principal amount.

7. Resultantly, the petition stands dismissed.

8. Since the main case has been dismissed, the pending application, if any, also stands disposed of.