

(2013) 10 P&H CK 0369

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10111 of 2013 (O&M)

M/s. Raj Transmission Engineering Ltd. and Others

APPELLANT

Vs

Allahabad Bank and Others

RESPONDENT

Date of Decision : 05-10-2013

Acts Referred:

Citation : (2014) 173 PLR 724

Hon'ble Judges : Sanjay Kishan Kaul, C.J.; Augustine George Masih, J

Bench : Division Bench

Judgement

Sanjay Kishan Kaul, C.J.

C.M. No. 14515 of 2013.

1. Leave is granted to place on record replication to the written statement of respondents No. 1 and 2 and the application is allowed.

C.W.P. No. 10111 of 2013.

The writ petition has been filed under Article 226 of the Constitution of India seeking quashing of the notice dated 14.07.2011 u/s 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the Act") as well as the notice u/s 13(4) of the said Act dated 14.07.2011. The further directions have been sought for respondent bank to accept One Time Settlement (OTS) proposal dated 18.02.2013.

In order to appreciate the controversy, it is necessary to notice that petitioner No. 1 is a limited company, while petitioners No. 2 to 4 have a dual capacity as directors and guarantors. Petitioner No. 1 failed to maintain the financial discipline of the loan advanced resulting in the impugned notices being issued. As to what transpired thereafter has been set out in the short reply filed by respondents No. 1 and 2, the Allahabad Bank. In this behalf, it is pointed out that one Sh. Shammi Khan, Advocate was appointed as the Local Commissioner by an

order of the DRT dated 24.01.2012 in respect of S.A. No. 324 of 2011 filed by the petitioners u/s 17(1) of the said Act to prepare an inventory of machinery, stocks and other goods lying in the premises of petitioner No. 1/company. The Local Commissioner submitted his report dated 13.02.2012 which is on record. The report shows that when the Local Commissioner visited the site of the factory, petitioners No. 2 and 4 present there asked him to show a copy of the order despite the fact that the order had been passed when they were present through their counsel. At their insistence, the Local Commissioner handed over them a certified copy of the order appointing him as Local Commissioner. Petitioners No. 2 and 4 started doubting the order and making excuses. In the meantime, some video recording/snaps had been taken and these two persons asked their staff and other persons to encircle the videographer and photographer and close the main gate from inside and not to leave the videographer and photographer till they deleted the recording made in their premises. The videographer and photographer were manhandled and rouged up and under threat made to delete whatever had been recorded. The said two persons not only showed disregard for the order of the Tribunal, but made adverse remarks against the Presiding Officer. This report was filed in the S.A. proceedings.

2. On 14.02.2012, when S.A. proceedings were taken up, an application i.e. I.A. 69 of 2012 was filed by Rajinder Kumar Chauhan/petitioner No. 2, but the present person was Ravi Chauhan/respondent No. 4 seeking to withdraw the S.A. on the ground that he was not getting natural justice and that he was not satisfied with the functioning of the Tribunal. As to the conduct of petitioner No. 4, it is stated in the said order as under:-

While appearing in this case the applicant No. 4 verbally in an aggressive and agitated manner shown disrespect and even by gesture and appearance repeated his words that he is not satisfied with the proceedings of this Court and while leaving the Court room he hurled this I.A. towards the dais of the Presiding Officer and stated that he withdraws his case from this Court.

3. The DRT found that there had been willful resistance and obstruction to the execution of the commission. The counsel for the bank requested for police assistance to make the list of inventory; The Presiding Officer directed police assistance for execution of the commission.

4. The Presiding Officer also issued notice to the counsel appearing for the petitioners after giving a finding that petitioner No. 4 had used derogatory language in the Court itself and that he was present only to withdraw the case as no counsel was ready to appear for him. The proceedings were adjourned to 24.04.2012.

5. There is a second lot of proceedings recorded on 15.02.2012 on account of a letter sent by petitioner No. 4 herein addressed to the Presiding Officer/Registrar without mentioning the title and number of the case once again seeking to

reiterate his lack of faith in the Court. The Presiding Officer considered it appropriate to transfer the matter to another DRT for which purpose the file was directed to be placed before the Appellate Tribunal. The matter was, thus, transferred by the Appellate Tribunal to DRT-I and notice was issued by that Tribunal to the petitioners. However, none appeared for the petitioners and S.A. was dismissed for non-prosecution on 21.03.2012.

6. The aforesaid sequence of facts effectively have not been denied in the replication.

7. In our view, there is no question of entertaining this petition under Article 226 of the Constitution of India, a discretionary relief, when remedy under the SARFESI Act, as per law laid down in *Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc.*, was invoked by the petitioners by filing the S.A. before the DRT u/s 17(1) of the said Act, but chose to get the said petition dismissed for non-prosecution. The circumstances under which it was dismissed have already been set out herein before. The least say the better for the conduct of both petitioners No. 2 and 4.

8. We are, thus, of the view that learned counsel for respondents No. 1 and 2 is right in his contention that the petitioners having not sought revival of the S.A. cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India and, thus, the petition is liable to be dismissed.

9. Dismissed.

10. We cannot, however, let the matter rest at this, as the conduct of both petitioners No. 2 and 4 is contemptuous in terms of endeavor to affect and circumvent the order passed by the Tribunal, a judicial forum. Not only that, the subsequent conduct of the said persons in the Court is contempt in the face of the Court. The endeavor of these two persons was to browbeat and scandalize the Court in order to obtain interim relief.

11. In view of the aforesaid, we may take note of the Contempt of Courts Act, 1971. In case of a criminal contempt other than a contempt in the face of the High Court or the Hon'ble Supreme Court in terms whereof the Supreme Court or the High Court may take action on its own motion or a motion made by any of the persons specified u/s 15(1) of the Act *ibid*.

12. We, thus, consider it appropriate to issue notice of criminal contempt against petitioners No. 2 and 4 as to why they should not be proceeded against and punished in accordance with law.

13. Let the petition be registered and placed before this Court. The two persons, namely, Rajinder Kumar Chauhan/petitioner No. 2 and Ravi Chauhan/petitioner No. 4 be arrayed as contemnors. Rajinder Kumar Chauhan/petitioner No. 2 accepts notice. Learned counsel for petitioners No. 2 and 4 states that he is entering appearance for the contemnors and will file a reply within a week.

List on 22.10.2013.

Augustine George Masih, J.