
(2007) 05 AHC CK 0036
In the Allahabad High Court

Naresh Spinners Limited and Another	APPELLANT
Vs	
State Bank of India and Another	RESPONDENT

Date of Decision : 03-05-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 1 AWC 981

Hon'ble Judges : S.S. Chauhan, J;S.N. Srivastava, J

Bench : Division Bench

Judgement

S.N. Srivastava and S.S. Chauhan, JJ.—Challenge in this petition and connected petition is directed against the sale proclamation dated 22.11.2006 issued by respondent No. 2 contained in Annexure-8 to the writ petition.

2. The petitioners, M/s. Naresh Spinners Limited, a company registered under the Companies Act and engaged in the business of manufacturing of cotton yarn was initially established with the appellation Amausi Textiles Mills Ltd. and subsequently, it was christened as M/s. Naresh Spinners Ltd. For its effective working, the company opened a cash credit limit account for Rs. 50 lac under an agreement with the State Bank of India Main Branch Lucknow, which was subsequently enhanced, to 75 lacs and thereafter to Rs. 95 lac with interest at the rate of 17% per annum. The company it would appear ran into rough weather and outstanding in the account overshoot the said limit. Subsequently, the said limit was further enhanced. Again outstanding against the company overshoot the limit. With repeated failure to liquidate the liability, it would appear, the Bank served the notice. It is in this perspective that present litigation erupted.

3. Heard Sri Umesh Chandra, learned senior advocate assisted by Sri Virendra Misra, learned Counsel for the petitioners and Sri Mohd. Arif Khan, learned senior advocate assisted by Sri D.P. Dwivedi and Sri Sharad Dwivedi appearing on behalf of the State Bank of India.

4. Learned Counsel for the petitioners has urged that due to various odd

situations, the company was compelled to close manufacturing work in 1993 and all the machineries were sold off in auction proceedings initiated for recovery of certain dues towards payment of liabilities accruing against the company. To begin with, a suit was instituted by the Bank for recovery of certain amount against the petitioners, which suit subsequently stood transferred to the Debt Recovery Tribunal (D.R.T.) where it culminated in being decreed on 23.1.2002. During the execution proceedings, the parties agreed to One Time Settlement (O.T.S.) in 2003 as contained in the letter dated 28.11.2003. The Bank nodded in acceptance the proposal as contained in the letter dated 28.11.2003 vide letter dated 29.3.2004 of the Bank subject of course to the condition of its approval by the D.R.T., Lucknow. It would transpire from the record that Debt Recovery Tribunal by the order dated 2.9.2005 gave approbation to one time full and final settlement for repayment of Rs. 1.28 crores. The petitioners, in observance of the conditions of One Time Settlement, deposited Rs. 40.98 lakhs by 19.6.2006, which was accepted by the Bank.

5. According to the learned Counsel for the petitioners, the petitioner No. 2 who is the Managing Director of the Company met with an accident and due to accident followed by other adverse circumstances staring stark in his face, failed to make deposit as agreed under One Time Settlement and it is in this perspective, it is urged, a sale proclamation was issued on 22.11.2006. Aggrieved by the action of the Bank, it is further submitted, the petitioners approached this Court by way of the instant writ petition and this Court vide order dated 29.12.2006 permitted the petitioners to deposit Rs. 41.00 lakhs immediately and also permitted to deposit Rs. 46.00 lakhs within next three months. For ready reference the interim order dated 29.12.2006 passed by this Court is quoted below:

This writ petition has been presented during winter vacations on the urgency that the property of the petitioners which is a Factory and land appurtenant to it, is being put to auction on 15.1.2007 for recovery of Rs. 80 lakhs approximately, whereas, the property according to petitioners' counsel is worthy Rs. 20 crores or so. In view of the urgency, we entertain the writ petition.

Heard Sri Virendra Mishra advocate for the petitioners, Sri Ajai Kumar Tiwari learned Counsel for the State Bank and perused the record.

With regard to a loan, taken by the petitioners, the petitioners and the Bank arrived at a compromise whereunder, the petitioners agreed to pay Rs. 1.28 crores on certain terms and conditions. When the petitioners had become defaulter, the matter was already referred to Debt Recovery Tribunal (D.R.T.) and with the permission of the D.R.T. the aforesaid compromise was arrived at. In response to the said settlement, the petitioners have already paid Rs. 40.98 lakhs to the Bank. They contend that on account of a serious accident met by the C.M.D., the petitioners failed to make further payment in terms of compromise and the opposite party No. 2 has issued a sale proclamation setting the property of the petitioners to sale on 15.1.2007.

The petitioners have approached this Court with the prayer that they may be permitted to immediately deposit a sum of Rs. 41 lakhs and for the remaining amount including reasonable interest thereon, time of three months be given to them to make payment.

Learned Counsel for the Bank opposed the petition and requested that time be given to him to file objection.

After considering the submissions of both sides and also the ground taken by the petitioners in not making the payment strictly in terms of the compromise, we provide that the petitioners may deposit with the Bank a sum of Rs. 41 lakhs immediately. On their doing so, till further orders, the sale of the property as per sale proclamation Annexure-8 to the writ petition, shall remain stayed subject to the condition that the petitioners would pay the remaining amount Rs. 46 lakhs within next three months. This is further subject to such order with regard to interest as may be passed subsequently. We make it clear that in case the petitioners after availing the stay order fail to deposit the amount as per direction given by the Court, they will further be liable to bear the expenses of putting the property on sale again.

Counter-affidavit may be filed within one month. Rejoinder-affidavit may be filed thereafter in a week.

List immediately thereafter connecting with Writ Petition No. 5728 (M/B) of 2006.

6. There is no denying of the fact that in compliance of the interim order passed by this Court on 29.12.2006, the petitioners have already deposited Rs. 41.00 lakhs and Rs. 46.00 lakhs in two instalments and the entire amount under the one time settlement has already been repaid.

7. Learned Counsel for the petitioners adverted attention of the Court to the fact that the petitioners have deposited the entire amount under the One Time Settlement and there is nothing on record to manifest that they were imbued with any intention not to repay the amount attended with further submission that it is discernible that the petitioners tried to get the entire Bank outstanding amount repaid but faced with formidable odd situations beyond their control, the petitioners defaulted in repaying the amount agreed under the terms of One Time Settlement. The learned Counsel sought indulgence of the Court commiseratively submitting that the sale proclamation be quashed attended with further prayer that the petitioners may be permitted to deposit the remaining amount if any with whatever delayed interest may have accrued thereon.

8. Per contra, Sri Mohd. Arif Khan, learned senior advocate appearing on behalf of the State Bank of India launched into strong polemics against the aforesaid submissions and urged that the total amount decreed on 23.1.2002 was Rs. 1,89,43,063.14, but under the O.T.S. arrived at between the parties, the settlement was pegged at Rs. 1.28 crore. He further urged that since the condition of the O.T.S. was not complied with, therefore, the term of O.T.S. is

rendered ineffectual the intimation of which was given to the petitioners by the letter dated 19.7.2006 and now the petitioners are liable to pay the entire amount under the decree dated 23.1.2002. The issuance of sale proclamation by the D.R.T. for execution of the decree, it was further contended, was rightly made and the same may be affirmed and the Bank may be permitted to initiate further proceedings against the petitioners for recovery of entire decretal amount.

9. We have considered the arguments of learned Counsel for the parties and carefully gone through the entire record.

10. The matter relates to C.C.L. account opened in 1986 and the maximum limit of which was Rs. 75.00 lakhs. The aforesaid account was continued to be operated upto 1993. It brooks no dispute that the petitioners availed cash credit limit from the C.C.L. account, but as the manufacturing unit was closed in 1993, the State Bank of India embarked upon proceedings against the petitioners for recovery of the outstanding amount. Subsequently, it would appear, one time settlement was arrived at between the parties in 2003 to which the D.R.T. accorded its approval by the order dated 29.3.2005, and in this view of the matter, the only question that survives for consideration is whether there was any willful default after the one time settlement on the part of the petitioners and if so with what effect.

11. As stated supra, the litigating parties entered into one time settlement on the basis of proposal dated 28.11.2003 sent by the petitioners to the Bank and the Bank vide letter dated 29.3.2004 accepted the terms and the conditions of the compromise. The proposal thereafter was remitted to D.R.T. and the D.R.T. by a detailed order dated 2.9.2005 accorded approval to the aforesaid compromise/settlement under the O.T.S. scheme as per the Reserve Bank of India's guidelines. From perusal of various annexures and the counter-affidavit, it clearly transpires that the Bank thereafter by various letters dated 10.9.2005, 29.10.2005, 29.12.2005, 28.1.2006, 17.2.2006, 6.5.2006 and 19.6.2006, directed the petitioners to despot the balance amount and the Bank also accepted certain amount deposited by the petitioners.

12. From a perusal of letter dated 19.6.2006 (Para 2) issued by the Bank, it is manifested that the petitioners had already repaid only Rs. 40.98 lakhs as per the terms settled against the full amount of Rs. 128.00 lakhs. The Bank was agreeable to permit the petitioners to deposit the balance amount as per the terms and conditions under the One Time Settlement vide letter dated 19.6.2006. It is not the case of the Bank that the petitioners have not paid anything towards outstanding amount or that they have repeatedly defaulted in clearing the dues of the Bank. From a perusal of the material on record, it is eloquent that the petitioners submitted proposal for one time settlement which received approbation from the Bank and also from the D.R.T. and in observance of the said proposal, the petitioners deposited a sum of Rs. 40.98 lacs. However, misfortune befell him and he suffered accident followed by other formidable adverse circumstances which stared stark in their face and this led to failure on

their part to deposit the amount under one time settlement. The learned Counsel appearing for the Bank has however not disputed the claim that the petitioners were disabled by formidable odds and adversial circumstances. The interim order passed by this Court itself is eloquent of the fact that even this Court seemed inclined to interfere in the matter by granting interim order ostensibly on consideration of ex facie circumstances leaning in favour of the petitioners. From the materials on record and regard being had to submissions across the bar, we have no alternative but to veer to the view that failure to deposit the amount under one time settlement was not one born of willful default on the part of the petitioners.

13. During the course of arguments, Sri Mohd. Arif Khan appearing on behalf of the State Bank of India filed a supplementary-affidavit annexing therewith a letter dated 19.8.2006 issued by the Bank regarding cancellation of compromise. There is no indicium in any of the averments made in this affidavit to vouch for the fact that the letter rescinding the compromise/settlement was actually served on the petitioners. Learned Counsel for the petitioners denied to have been served with any such letter. In the circumstances, there being nothing on record to show that the letter was served to the petitioner, this Court is least inclined to lap up the claim on its face value. The proposition of law brooks no dispute that until and unless any order is served on the parties, it would not be capable of being enforced and by this reckoning, we have no hesitation to hold that the said order will not operate as an obstacle in the way of granting the relief sought in the petition. The quintessential effect of the above is that under the O.T.S. the petitioners have already deposited the entire amount except the interest part, if any.

14. In the above conspectus, we are convinced that the petitioners had intention to repay the amount, but they were prevented by formidable odds and difficulties beyond the control in observing in compliance the commitment. The view being taken by us in the matter in hand receives reinforcement from the ratio flowing from the judgment of the Apex Court in *S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others*, In this case, the entire money was deposited even after the prescribed period and the Bank permitted and accepted the same. Reverting to the facts of the present case, it is obvious that petitioners were desirous of liquidating the debts which is manifested from the fact that they mooted proposal for one time settlement which was accepted and therefore it cannot be said that the petitioners were wanting in efforts or lacked desire to repay the remaining amount in such a situation when their manufacturing work in the unit was closed in 1993 and the entire machinery worth crores of rupees etc. was sold off in auction fetching a very nominal amount of Rs. 20.00 lakhs against recovery/repayment of dues. Having other relevant factors in mind, we are of the view that the petitioners were desirous of repaying the amount and the entire amount was deposited under the O.T.S.

15. The case law cited by the learned Counsel for the Bank in *Punjab National*

Bank Vs. O.C. Krishnan and Others, , is not applicable in the facts of the present case. In this case the Apex Court laid down ratio relating to writ petition under Article 226 of the Constitution of India on the ground of alternative and efficacious remedy of filing the suit. Another decision cited is Tamil Nadu Industrial Investment Corporation Ltd. v. Millenium Business Solutions Put. Ltd. and Anr. 2006 (1) CLR 718 , Madras High Court. It is a case in which guidelines for issuance of mandamus was laid down by the Madras High Court. This decision too in our considered opinion, cannot be imported for application to the facts of the present case.

16. The submission of the learned Counsel for the opposite parties that writ petition is not maintainable in view of the judgment of this Court in M.M. Accessories and Anr. v. U.P. Financial Corporation, Kanpur and Anr. is also not applicable in the facts of the present case as the proposal of One Time Settlement was already accepted and finalized by the D.R.T. This case is also distinguishable in the facts of the present case.

17. As a result of foregoing discussion, we are of the view that the sale proclamation issued by the opposite parties is liable to be quashed. However, in the facts of the present case, we are also of the view that the petitioners are liable to pay the entire interest on settled amount of Rs. 1.28 crore under the O.T.S. and accepted by the D.R.T. from the date it was due. The State Bank of India shall calculate the interest due treating deposits made by the petitioners as principal amount on the date of deposit and shall calculate the interest on the remaining amount of the deposits. The State Bank of India will give details of the interest payable by the petitioners which would be calculated on the basis of this order within a period of 15 days from the date of presentation of a certified copy of this judgment and the petitioners shall pay the same within 15 days thereafter. On payment of the entire interest due under this order, the property shall be released in favour of the petitioners.

With the above observations and directions, the writ petitions are finally disposed of.