(2015) 03 P&H CK 0159

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 21381 of 2014 (O and M)

Panwar Steels Limited and Others APPELLANT

Vs

Indian Overseas Bank RESPONDENT

Date of Decision : 20-03-2015

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2)

Citation : (2015) 03 P&H CK 0159

Hon'ble Judges : S.J. Vazifdar, Acting C.J.;Augustine George Masih, J.

Bench : Division Bench

Advocate : Sanjiv Guupta (KKR), for the Appellant; C.S. Pasricha, Advocates for the Respondent

Final Decision : Disposed off

Judgement

S.J. Vazifdar, Actg. C.J.—Rule. Rule returnable and heard forthwith.

2. The petitioners have challenged the order of the Debt Recovery Appellate Tribunal dated 03.09.2014 dismissing their appeal filed against the order of the Debts Recovery Tribunal on the ground of limitation and holding that the petitioners had not succeeded in explaining the inordinate delay in filing the appeal.

3. On 11.02.2011, the right of petitioners No. 1, 2 and 3 to file a written statement was closed. The DRT had by an order dated 29.03.2012 directed the petitioners to pay an amount of Rs.4.56 crores with interest at 12% per annum. The appeal was filed before the DRAT on 13.5.2014 i.e. after more than two years. We will refer to the petitioners'' contentions regarding an OTS arrived at between the parties on 20.11.2010 under which the petitioners had agreed to pay and the respondent-bank had agreed to accept a sum of Rs.1.65 crores in full and final settlement of the account later. The petitioners had also challenged the respondent''s action under the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Act, 2002 by filing S.A. No. 96 of 2012. We

will refer to the same also shortly.

4. The delay in filing the appeal before the DRAT is sought to be explained on the basis that the petitioners were going through a difficult time during the relevant period. Even prior to the order of the DRT, the Haryana State Pollution Control Board had ordered closure of the first petitioner''s unit by sealing the plant and machinery and disconnecting the electric supply. The HSIIDC initiated action against the petitioners under Section 29 of the Haryana Financial Corporation Act and took over the possession of the assets of the company on 16.01.2006. The HSIIDC also auctioned the unit for an amount of Rs.5.37 crores. The respondent-bank initiated action under the SARFAESI Act by issuing a notice under Section 13(2) of the SARFAESI Act dated 01.03.2007.

5. Petitioner No. 2 was arrested in connection with FIR No. 127 dated 23.04.2011 and remained in custody till 18.08.2012 i.e. after the date of the order of DRT dated 29.03.2012. Petitioners No. 2,3,5 and 6 were dispossessed in respect of their residential accommodation on 19.03.2012. Immediately thereafter, the DRT passed the order dated 29.03.2012 against which the petitioners filed the appeal before the DRAT which was dismissed on the ground of limitation by the order impugned in this writ petition. It is important to note in the petitioners'' favour that even thereafter the petitioners paid the principal amount due under the OTS. The interest remained to be paid. The petitioners have now agreed to pay the same.

6. On 16.12.2013, the DRT dismissed the S.A. filed by the petitioners challenging the sale by the respondent of the secured assets under the SARFAESI Act. On 16.1.2014 the petitioners challenged this order before the DRAT.

7. The appeal which was dismissed by the impugned order of the DRAT was filed on 13.05.2014. The petitioners contend that they came to know of the order dated 29.3.2012 passed by the DRT only on 31.03.2012 from their counsel at Chandigarh at the time of drafting a petition for special leave to appeal to the Supreme Court in connection with a matter regarding bail.

8. We are in agreement with the DRAT that the petitioners'' explanation for the delay in filing the appeal cannot be accepted for more than one reason. The order dated 29.03.2012 was passed in the presence of the petitioners'' counsel and one of its directors one Man Singh Panwar and his wife Smt. Sarla Panwar. They had sought time to file the written statement, but did not do so. Their right to file the written statement was closed on 11.02.2011. The petitioners were represented through counsel throughout. There is no affidavit from the counsel stating that they did not inform the petitioners about the said order.

9. The DRAT also understandably did not accept as a ground for condonation of delay the fact that some of the petitioners had been arrested in the criminal proceedings. As also pointed out by the learned counsel appearing on behalf of the respondent bank , some of the petitioners could in any event have filed the appeal as they had not been arrested. Moreover, as also rightly noted by the

Tribunal, the S.A. was being prosecuted during the relevant period. During the relevant period, the petitioners had taken various other steps also with respect to the property which is the subject matter of the S.A. There is no reason then for the petitioners not having filed the appeal within time.

10. Though we are in agreement with the DRAT that the delay has not been adequately explained, we are inclined to adopt a rather liberal approach while affording the petitioners an opportunity of having their appeal heard on merits for the following reasons.

11. It is true that the petitioners had prosecuted other proceedings, such as, in the S.A. and in the criminal proceedings. It is also true that not all the petitioners had been arrested. The arrest of some of the petitioners did not prevent them from prosecuting the other proceedings, namely, the S.A. They also took various other steps in respect of the secured assets. The fact, however, remains that the petitioners were going through difficulties financially and in the various proceedings civil and criminal adopted against them. This by itself may not be a ground for condoning the delay. There is, however, an aspect which, added to the above facts has persuaded us, albeit after some hesitation, to take a very lenient and liberal view in the petitioners'' favour to the extent of affording them an opportunity of having the appeal heard on merits.

12. As we mentioned earlier, an OTS had been entered into between the parties. By a letter dated 20.11.2010 (Annexure P/4), the respondent accorded sanction of OCS in the sum of Rs.1.65 crores on the terms and conditions mentioned therein. Rs.20 lacs held in no lien account was to be appropriated immediately. The petitioners were to arrange payment of the balance amount of Rs.1.45 crores within three months, failing which the petitioners were to pay interest at 12.5% per annum from the date of the sanction of the OCS and other incidental charges. The sanction was to be valid up to 15.03.2011 and would lapse thereafter. Failure to remit the amount as stipulated would result in a decree as prayed for in the O.A. The compromise was not to have any bearing on the on-going criminal cases. The petitioners claim to have paid a sum of Rs.60 lacs within time. In any event, admittedly, the balance amount of Rs.1.05 crores was also paid by 18.04.2012. This, however, was after the last date of payment even as extended up to 31.08.2011 by the respondent''s letter dated 18.08.2011.

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.

14. It is true that the petitioners did not pay the amount due under the OCS as per the terms and conditions thereof including the time stipulated therein.

Further, the interest, in any event, has not been paid. By letter dated 18.08.2011, the respondent extended the time for payment up to 31.08.2011. By the said letter, the respondent expressly stated that if the petitioners fail to pay the balance by that date, the OCS would stand cancelled and the bank would be entitled to recover the entire amount with interest and other incidental charges. Moreover, as recorded in the letter of the DRT dated 18.04.2012 (Annexure P/8), the respondent accepted the balance payment of Rs.1.05 crores without prejudice to its rights. Prima facie, it, therefore, appears that the respondent was entitled in these circumstances to have the O.A. decreed as prayed.

15. Despite these facts, we do not wish to preclude the petitioners from having their case heard on merits. Learned counsel appearing on behalf of the petitioners relied upon several judgments wherein the courts had taken a liberal view in view of the exigency of the situation and condoned the delay in paying the amounts under an OTS. It is sufficient to refer to the following observations of the Division Bench of this Court in M/s A-One Mega Mart P. Limited and Others Vs. HDFC Bank and Another, :

"29. Now taking up the issues arising at Nos.(b) and (c), they can be adjudicated together. The petitioners had submitted a proposal for OTS to the respondent Bank which was accepted whereby petitioners were required to liquidate the outstanding liability by 22.3.2011 which period was extended vide letter dated 18.4.2011. The petitioners had deposited Rs. 50,00,000/- and the balance amount of Rs. 2 crores was to be deposited to complete the requirements of OTS accepted by the Bank. The petitioners due to certain personal and practical difficulties could not honour the commitment and had sought further extension which, however, was declined. On 17.6.2011, father of petitioners No. 2 and 3 after illness for over a month expired and thereafter the petitioners again approached the respondent Bank to pay the balance outstanding amount of Rs. 2 crores. The bank refused to accept the same. The petitioners in order to show their bonafides had presented drafts for Rs. 2 crores on 26.7.2011 to the Bank and had also produced four demand drafts duly revalidated in this Court on 10.2.2012 which were deposited with the Registrar (Judicial) of this Court. Further on 25.7.2012, learned counsel for the petitioners had stated that besides the aforesaid amount of Rs. 2 crores, the petitioners were prepared to pay additional amount of Rs. 50 lakhs. This intention clearly depicts the bonafides of the petitioners. The narration of events noticed hereinbefore shows that it was due to certain unfortunate exigencies, the petitioners could not honour the terms of the OTS. In such circumstances, the action of the respondent-Bank in rejecting the OTS is harsh and unjust. It may also be noticed that the petitioners have no other remedy available against the rejection of extension of time for OTS proposal. This Court in Sat Kartar Ice and General Mills v. Punjab Financial Corporation, 2008(1) ISJ Banking 248 had condoned the delay in depositing the amount of OTS and directed the Bank to abide by the OTS. Similarly in State Bank of India Vs. Vijay Kumar, again, the delay in depositing the amount which was condoned by the High Court was upheld by the Apex Court. Accordingly, in the present facts and circumstances after condoning the delay in depositing the amount, while allowing the writ petition, it is directed that in case, the petitioners deposit another sum of Rs. 50 lakhs in terms of the statement made by their counsel on 25.7.2012 within two months of receipt of a certified copy of this order, the OTS shall be implemented. It is further directed that the drafts deposited in pursuance to the order of this Court dated 10.2.2012 shall be returned to the petitioners, who after getting them revalidated, shall deposit the same with the bank within the aforesaid period for getting the OTS implemented." 16. We do not wish to express any opinion as to whether in the facts and circumstances of the present case, the petitioners ought to be permitted to have the OTS enforced despite their not having complied with the terms thereof and despite their having offered to pay all the amounts due thereunder. That is an issue which must be decided by the DRAT. It is sufficient for us to observe that by this order we are merely granting the petitioners an opportunity of having their case heard on merits.

17. In any event, the interest is due and payable even under the OCS. That is the minimum amount that the petitioners ought to pay the respondent forthwith in any event. Considering the nature of the delay in filing the appeal and the proceedings that the respondent has been compelled to adopt and proceed with despite the OCS, we intend awarding costs in the respondent''s favour.

18. In the circumstances, the writ petition is disposed of by the following order.

The impugned order is set aside and the petitioners shall be entitled to have the appeal heard on merits subject to their complying with all the other provisions of the Act and the following conditions. The petitioners shall pay interest as per the OCS contained in the letter dated 20.11.2010. The respondent shall inform the petitioners the amount of interest. The petitioners shall pay the same within one week of receiving an intimation from the respondent in this regard in writing without demur or protest but subject only to any order that may be passed by the DRAT in appeal. The respondent shall be entitled to receive the amount as per this order entirely without prejudice to all its rights and contentions. The payment of the amount pursuant to this order shall not prejudice the respondent''s contentions in any manner whatsoever. The petitioners shall also pay the respondent costs fixed at Rs.1,00,000/- within two weeks from today as a condition precedent to the appeal being heard by the DRAT.

