(2011) 03 P&H CK 0087

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 6614 of 2009

P.K. Malia	APPELLANT
Vs	
Corporation Bank and Others	RESPONDENT

Date of Decision : 25-03-2011

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(2), 13(3)

Citation : (2011) 163 PLR 293

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ranjit Singh, J.—The petitioner has filed this writ petition making prayer for restraining the respondents from auctioning the mortgaged property of the petitioner bearing khasra No. 130/4 min measuring 216.66 sq. yds. situated in village Pandori Wariach, Bye pass road Amritsar. The plea is that the petitioner had already deposited sum of Rs. 2,65,000/- over and above the payment earlier made, which was in full and final settlement, in view of the acknowledgment of debt dated 13.01.2009 and letter dated 17.04.2009. The petitioner had rather prayed for restraining the respondents from enchasing cheque of Rs. 2.65 lakhs till the proceedings under The Securitization and "Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as ''Act'') are withdrawn or alternatively directing the respondents to release the sale deed. While issuing notice of motion on 01.05.2009, this Court passed the following order:

Meanwhile, all proceedings u/s 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 against the petitioner shall remain stayed. However, the cheque dated 30.04.2009 in the sum of Rs. 2,65,000/- given by the petitioner towards full and final settlement may be encashed by the respondent-Bank but with a clear undertaking that thereafter no claim shall survive against the petitioner.

2. Concededly, the Bank has encashed cheque of Rs. 2,65,000/- on 04.05.2009. As per the counsel for the petitioner, the above order was brought to the notice of the Bank on 03.05.2009. Of course, the counsel for the Bank would dispute this fact Out of sum of Rs. 6,30,000/- sanctioned as Home loan in favour of the petitioner he had utilized only Rs. 3,38,000/-. On account of some default on his part, the proceedings u/s 13(2) and (3) of the Act were commenced against the petitioner on 17.11.2008. The petitioner approached the Bank for one time settlement when the Bank issued the Debt certificate showing Rs. 2,73,659/- as payable amount. Thereafter, the petitioner paid sum of Rs. 75,000/- and finally settled at Rs. 2,73,387/- on 14.032009. The petitioner had then issued a post dated cheque of Rs. 2,65,000/- payable on 30.042009 though the amount shown due against him was Rs. 1,98,100/-. Since the Bank was pursuing for auctioning the mortgaged property, the petitioner had filed the present writ petition.

3. In addition, the petitioner had also taken personal loan (Corpmittar) of Rs. 50,000/-. The above noted interim order came to be passed on the basis of document to which attention of the Court was drawn by the petitioner. Even now, Annexure R-3 has been placed on record in form of reply, where closing balance shown against the petitioner is Rs. 1,98,501/-. The document placed on record by the bank also shows that the amount of Rs. 2,65,000/- has been credited, to the account of the petitioner. By way of interim measure, the petitioner was required to deposit another sum of Rs. 40,000/- within 10 days to show his bona fides.

4. On this basis, the Manager of the Bank was requested to come present to explain as to why the accounts of the petitioner should not be considered as finally settled. The Manager thereafter had come present. The Bank was also directed to place on record the calculation as to how interest has been worked out in this case, especially from the date when me account was declared NPA. In addition, the Bank was required to indicate the floating rate of interest charged from the date the loan was advanced up to the date declaring the same as NPA. Since die loan was advanced at the agreed rate of interest of 7.75% per annum, the bank was also required to make calculation on the basis of rate of interest as agreed and then see whether the account of the petitioner has been fully settled or not.

5. If the loan or the balance is calculated on the floating the rate of interest then as per the Bank, the amount due against the petitioner as on 31.01.2011 is Rs. 1,56,850/-. Cheque deposited by the petitioner for sum of Rs. 40,000/- is yet to be encashed and is lying with the Bank. On the direction of the Court, the Bank has also calculated the balance due by taking Rs. 7.75% per annum to be the jute of interest as was agreed between the Bank and the petitioner. If the calculation is done on that basis, nothing is due towards the petitioner and the entire loan liability has been discharged by him.

6. Copy of the agreement for term loan has beep placed on record. The rate of interest agreed was Rs. 7.75% per annum. In the schedule, however, it was mentioned while recording terms and conditions of sanction that rate of interest i.e. Rs. 7.75% per annum would be subject to change from time to time. Taking advantage of this, the Bank is charging floating rate of interest to urge that still the liability of Rs. 1,56,850/- is standing against the petitioner. The stand of the Bank father is that the loan was allegedly mis-utilized and, accordingly, highest rate of interest was chargeable and as such the calculations were made at the rate of 16% per annum on the entire loan amount.

7. The action of the Bank in working out loan liability of the petitioner is highly unfair, unreasonable and inequitable. Even the floating rate of interest as agreed is not adopted to calculate the liability. The loan is taken on the basis of an agreement The terms were agreed and so also the rate of interest. Charging rate of interest at 16% per annum is not only against the terms but is arbitrary and show that the Bank is acting with some vengeance and spite against the petitioner. The bank has been acting unilaterally in charging the much higher rate of interest, which is more than even the double of the agreed rate but has not fairly given credit to the petitioner for being sincere in discharging the liability. The Banks are having scheme of one time settlement. The aim is to enable the person, who is the borrower to discharge the liability and not to put him in such a burden in some manner that he is ruined. Concededly, as per. the rate agreed, the petitioner has discharged his entire liability and rather has paid sum of Rs. 40,000/-more, which is yet to be encashed.

8. I am unable to understood as to how the bank would plead that the loan was misutilized. The bank would primarily be interested in recovery of loan. The allegation made by the petitioner that the Bank had been unfair for some reasons or the other can not be ruled out. The Senior Officer of the Bank may look into the conduct of the Bank staff and take some remedial measure. The petitioner cannot and should not be asked to pay nothing more than what was agreed. That is the only fair Way to resolve.

9. The writ petition is, accordingly, allowed. The petitioner clearly has discharged his entire liability. Rather a sum of Rs. 40,000/- would need to be refunded; That is the only fair way to deal with the case. The bank would take action to refund the amount of Rs. 40.000/- lying with it and this shall be treated as a final settlement between the parties. All the documents of the petitioner lying with the bank shall be returned to the petitioner. The petitioner for this purpose would appear before the Bank Manager (who will be present in the Court) on 06.04.2011 and he shall return all the documents to the petitioner, which the petitioner had submitted with the Bank to secure loan.