

(2013) 11 P&H CK 0260
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 20619 of 2008

Punjab National Bank

APPELLANT

Vs

M/s. SGN Telecoms Limited and Others

RESPONDENT

Date of Decision : 28-11-2013

Acts Referred:

Citation : (2013) 11 P&H CK 0260

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

Bench : Division Bench

Advocate : C.S. Pasricha, for the Appellant; Praveen Chander Goyal, for the Respondent

Final Decision : Disposed Off

Judgement

Sanjay Kishan Kaul, C.J.—The loan was availed of by respondent No. 1 from the petitioner with respondents No. 2 to 5 as directors of respondent No. 1 and guarantors of the loan. The term of repayment was not adhered to with the result that the petitioner was constrained to file recovery proceedings before the DRT Chandigarh in the year 2001 for Rs. 2,23,77,060/-. In order to resolve the dispute, the matter was taken up for consideration in the Lok Adalat on 4.10.2002. A compromise was arrived at inter se the parties before the Lok Adalat whereby the amount was settled at Rs. 111 lacs subject to approval of Board of Directors of the petitioner-bank, as per compromise deed dated 10.9.2002 (Annexure-P-1). The repayment schedule required Rs. 1 lac to be paid within one month from the date of approval and the rest of the amount to be refunded within 18 months from the date of approval as per availability of funds with respondents No. 1 to 5 either in one go or in installments. In case of failure of payment, the petitioner-bank could charge simple interest at 11.5% per annum PLR on the amount outstanding after 18 months.

2. The aforesaid compromise deed was placed before the Lok Adalat and exhibited as Ex. C1 and orders were passed for repayment in terms of said Ex. C1 with title deeds to be returned after compliance of the term of compromise.

3. The subsequent communication dated 6.3.2003 of the petitioner-bank sought to convey the acceptance of the bank to the settlement amount of Rs. 111 lacs but on or before 5.3.2004 in full and final settlement i.e. time period was reduced from 18 months to 12 months. This gave rise once again to the dispute inter se the parties. The bank thus, moved an application before the Debt Recovery Tribunal (DRT) stating that the proposal of settlement was approved by the Board of Directors of the Bank, but with modified terms. A technical plea was also sought to be raised that all the defendants were not parties to the compromise and sought revival of the recovery proceedings. The DRT opined that Ex. C1 could not be termed as compromise deed as it did not show the consensus arrived at between the parties unconditionally and that the bank's higher authorities cannot be bound by other defendants. The DRT thus, recalled the order dated 4.10.2002 and restored the petition to its original number, vide order dated 13.12.2005.

4. The aforesaid order was assailed in Civil Writ Petition No. 9372 of 2005 wherein as per order dated 6.7.2005 respondents No. 1 to 5 were directed to deposit an amount of Rs. 25 lacs. Thereafter, the matter was disposed of on 25.10.2005, relegating the parties to a remedy before the Debt Recovery Appellate Tribunal (DRAT).

5. The DRAT allowed the appeal, vide order dated 25.9.2008 and held the parties bound by the compromise deed which order is sought to be assailed by the petitioner-bank in the present writ petition under Article 226 of the Constitution of India.

6. A perusal of the order of the DRAT shows that it has taken note of the compromise deed which was executed by one of the directors of respondent No. 1. The others are family members. Those persons were not seeking to wriggle out of the compromise and thus, it concluded that the petitioner-bank cannot take advantage of this fact to get out of the settlement. Insofar as payments had been made, they were set out as below:-

7. The DRAT noticed that only interest remains to be paid and found no justification in the bank reducing the time for repayment by six months. The DRAT held respondents No. 1 to 5 liable to pay interest within 15 days of the order as per original Ex. C1.

8. We have heard learned counsels for the parties and are informed that even the interest amount as per Ex. C1 has been paid. We are in agreement with the view taken by the DRAT that the petitioner-bank cannot re-open the settlement as there was no justification for reducing the period of repayment by 6 months when the amount itself was acceptable. Thus, to that extent there is no infirmity in the impugned order.

9. The only other aspect which is urged by the learned counsel for the petitioner is that the repayments were not made even during the 18 months" period time. Thus, respondents No. 1 to 5 should not be shown indulgence as per compromise

deed Ex. C1. However, we are of the view that a part of the problem arose due to own stand of the petitioner-bank, while simultaneously nothing prevented respondents No. 1 to 5 to have at least paid the amount within 18 months. No doubt, they had paid the interest on the amount, but that for the period beyond the 18 months. The benefit of waiver of interest for 18 months would have been available if the payment would have been made within time. The table of payment itself shows that the substantive payments have been made much beyond the period of 18 months and thus, we are of the view that equitable solution would be that respondents No. 1 to 5 cannot avail of the benefit of interest free period of 18 months though, the implementation of settlement is delayed on account of the petitioner-bank. Respondents No. 1 to 5 should thus, be held liable to pay interest at 11.5% simple interest as per compromise deed Ex. C1 for the amounts remaining unpaid even during the period of 18 months.

10. We thus, partly modify the order of the DRAT and direct the respondents to pay the amounts of interest even for the moratorium period. The petitioner-bank should calculate the interest amount and communicate the same to respondents No. 1 to 5 within a period of 15 days from today and respondents No. 1 to 5 will remit the interest amount within one month thereafter. We are given to understand that no amount was paid within this period of 18 months other than the initial amount of Rs. 1 lac, for which the cheque was not encashed which is own making of the petitioner. Thus, interest would be payable on Rs. 110 lacs at 11.5% for a period of 18 months. The petition accordingly stands disposed of.