
(2020) 02 SHI CK 0027

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 450 Of 2019

Sampooran Layer Farming Pvt. Ltd.

APPELLANT

Vs

Indian Overseas Bank & Another

RESPONDENT

Date of Decision : 29-02-2020

Acts Referred:

Constitution Of India, 1950 — Article 19(1)

Citation : (2020) 02 SHI CK 0027

Hon'ble Judges : L. Narayana Swamy, CJ; Dharam Chand Chaudhary, J

Bench : Division Bench

Advocate : Umesh Kanwar, Arvind Sharma

Final Decision : Allowed

Judgement

Dharam Chand Chaudhary, J

1. The petitioner is a private limited company, incorporated vide certificate Annexure P-1. Shri Sumit Khanna, through whom this writ petition has been filed and his wife Rashi Khanna are its Directors as is apparent from the resolution Annexure P-2. The department of industries, Government of Himachal Pradesh vide Annexure P-3 has approved the project proposal qua setting up the industrial enterprises â??Poultry feed and processing of broiler Meat manufacturing unit along with slaughter Houseâ? at Village Bijapur, Tehsil Amb, District Una, Himachal Pradesh in favour of the petitioner.

2. Admittedly, five FDRs Annexure P-4 (colly.) in the sum of Rs. 10,00,000/- (ten lacs) each are prepared in the name of the petitioner-company and already matured for payment on 17.2.2019. The petitioner in order to set up its unit needs finances and for that approached the respondent-Bank to

release the amount under the FDRs in its favour, besides, having applied for sanction of loan also. The complaint is that the respondent-bank despite repeated requests failed to release the amount under the FDRs, in favour of the petitioner. The representation Annexure P-5 and legal notice Annexure P-6 also came to be issued in favour of the respondent, but of no avail, hence this writ petition filed with a prayer to issue a writ of mandamus to release the amount under the Fix Deposit receipts Annexure P-4, dated 17.11.2017 issued by the respondent bank, together with upto date interest.

3. The response to the writ petition, by way of preliminary objections in a nutshell is that the writ petition is not maintainable as the petitioner has concealed material facts from the Court. The FDRs are stated to be not prepared by the petitioner from its own funds and rather from the funds of M/s Sumit Enterprises. The petitioner is also stated to be guilty of illegal diversion of funds in connivance with his family members. Directors of the petitioner Company Sumit Khanna in connivance with his wife Rashi Khanna, his friend Pradeep Singh Jamwal and Anita Seth has cheated the respondent-Bank and also the other banks. A complaint has, therefore, been stated to be made to Superintendent of Police, Central Bureau of Investigation, Anti Corruption Branch, Shimla on 16.1.2019, for registration of case against the petitioner qua fraud of crores of rupees i.e. 546 lacs having taken place in Bathu Branch of the bank. It is however, admitted that the petitioner-company has two Directors i.e. Sumit Khanna and Rashi Khanna. They are husband and wife in relation. The petitioner-Company had not taken any loan from the respondent-Bank. Five FDRs amounting to Rs. 10,00,000/- are stated to be in the name of petitioner-Company, which have been prepared out of the funds of M/s Sumit Enterprises, a proprietorship firm of Sumit Khanna. Various loans raised by the so called friends Anita Seth and Reena of Sumit Khanna have been referred to in the preliminary submissions. Similarly, various transactions of transfer of funds in the account of Shivam Seth, Rashi Khanna, Pradeep Singh Jamwal, M/s Sumit Enterprises etc. etc. have also been pointed out. The preparation of FDRs amounting to Rs. 50,00,000/- fifty lacs is stated to be on account of huge illegal/unexplained transfer of funds.

4. On merits, it is submitted that the petitioner is a private limited company

incorporated under the provisions of Companies Act. It is denied for want of knowledge that the petitioner intend to set up its unit at Village Bijapur, Tehsil Amb, District Una. The FDRs are stated to be not prepared from the funds in the account of the petitioner-Company and rather from the funds in the account of M/s Sumit Enterprises. The date of maturity of the FDRs i.e. 17.2.2019 has not been disputed. It is also submitted that no act of respondent-Bank is illegal unreasonable, and irrational. The writ petition has been sought to be dismissed.

5. In rejoinder, the petitioner has controverted the contentions to the contrary in reply being wrong and submitted that Sumit Khanna is the sole proprietor of M/s Sumit Enterprises and for setting up new business of Poultry Layer Farming and Meat Processing Unit had registered the petitioner-company under the companies Act. There is also no dispute so as to he having invested a sum of Rs. 50,00,000/- in the form of FDRs from sole proprietorship account of M/s Sumit Enterprises for doing new capital induction in the name of petitioner-company. It is also admitted that Sumit Khanna and Rashi Khanna are the Directors of the petitioner company. M/s Sumit Enterprises is proper legal entity and is in physical existence and is regularly maintaining proper books of accounts. The said Company has no statutory and any kind of liability standing against it till date. Also that Sumit Khanna and Rashi Khanna, the Directors of the petitioner company are not defaulters of any Bank or financial institution. It is denied that the petitioner and its directors were ever involved in illegal transaction of the money from one account to another and thereby cheated the petitioner-Bank or anyone else.

6. On completion of record, we have heard Mr. Umesh Kanwar, Advocate, learned counsel representing the petitioner and Mr. Arvind Sharma, Advocate on behalf of the respondent-Bank and also gone through the records.

7. The short controversy needs redressal in this writ petition is as to whether the respondent-Bank has succeeded in justifying its action in not releasing the FDRs in favour of the petitioner-Company despite the same already matured on 17.2.2019. The answer to this poser in all fairness and in the ends of justice would be in negative for the reason that the stand of the respondent-Bank in reply to the writ petition is in sundry as nothing specific has come on record to justify its action not to release the amount under the

FDRs to the petitioner.

8. Admittedly, a sum of Rs. 50,00,000/- (fifty lacs) has been invested by the petitioner- Company in the form of FDRs Annexure P- 4 (Colly.) Even if

it is admitted that the funds for preparation of these FDRs have been utilized from the account of M/s Sumit Enterprises, the respondent-Bank cannot

stop the release thereof in favour of the petitioner for the reasons that M/s Sumit Enterprises is a sole proprietorship company of Sumit Khanna, who

happens to be one of the Directors of the petitioner company. Another Director of this company is Rashi Khanna, his wife. This Court fails to

understand as to how the alleged illegal transfer of the funds in various accounts by the petitioner, his wife and his so called friends Pradeep Singh

Jamwal and Anita Seth is coming in the way of release of the amount under the FDRs in question in favour of the petitioner, particularly when as per

own admission of the respondent-Bank the petitioner has neither raised any loan from it nor granted a sanction of loan in favour of anyone else.

Otherwise also, the respondent-Bank has also made complaint to the Police for registration of case in the matter of frequent transaction of funds in

various accounts and it is a matter of inquiry as to whether any illegal transaction of funds from one account to another has taken place or not.

However, so far as the sum of Rs. 50,00,000/- (fifty lacs) is concerned, the same is lying deposited in the shape of FDRs in the name of the petitioner.

Since the department of industries to the Government of Himachal Pradesh has sanctioned the project to set up its industrial Unit by the petitioner at

village Bijapur Tehsil Amb, District Una vide Annexure P-3 and as it can reasonably be believed that the petitioner is in need of money to set up its

industrial unit, therefore, the respondent-Bank should have released the sum of Rs. 50,00,000/- (fifty lacs) to the petitioner particularly when the FDRs

stands already matured for payment. The present, therefore, is a case where the action of the respondent-Bank not to release the amount in question

is not only harsh and oppressive, but also highly illegal. The same is also violative of fundamental rights guaranteed under Article 19(1) of the

Constitution of India. The respondent Bank, as a matter of fact, had no occasion to withheld the amount under the five FDRs. Such an act on its part

is not legally sustainable and rather patently arbitrary, illegal and violative of the Constitutional provisions.

9. In view of what has been said hereinabove, this writ petition succeeds and the same is accordingly allowed. Consequently, the respondent-Bank is

directed to release the amount under the FDRs Annexure P-4 (Colly.) to the petitioner together with interest upto date as prevalent within four weeks

from today, failing which the same shall be payable together with 9% extra interest, to be recoverable from the salary of the erring

officer(s)/official(s). The writ petition is accordingly disposed of so also the pending application(s), if any.

An authenticated copy of this judgment be supplied to learned counsel representing the respondents for compliance.