(2010) 12 SHI CK 0283

In the High Court Of Himachal Pradesh

Case No : CWP No. 1029 and 1030 of 2008

State Coop. Bank Ltd. APPELLANT

Vs

State of HP and Others RESPONDENT

Date of Decision : 02-12-2010

Acts Referred:

Citation : (2010) 12 SHI CK 0283

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—Both these petitions are being disposed of by a common judgment since common questions of law and fact are involved in the same.

2. Respondent No. 4-Sh. Desh Raj Sharma was allotted a retail outlet by the Hindustan Petroleum Corporation Limited. To set up this outlet, he obtained two loans from the Petitioner bank. One was a term loan and one was a cash credit facility. Admittedly these loans were not repaid in time and therefore the bank initiated proceedings u/s 73 of the H.P. Co operative Societies Act, 1968. In one case the Arbitrator held Respondent No. 4 liable to repay principal amount of Rs. 16,67,172/-, interest Rs. 58,783/-and arbitration cost Rs. 86,298/-that is a grand total of Rs. 18,12,253/-. In the other case, the Arbitrator held Respondent No. 4 liable to repay principal amount of Rs. 5,17,481/-, interest Rs. 21,997/-and arbitration cost Rs. 26,974/ i.e. grand total Rs. 5,66,452/-. Upto 31.12.2001 the interest was calculated and thereafter Respondent No. 4 was directed to pay the agreed rate of interest till realization.

3. Respondent No. 4 filed an appeal before the Additional Secretary Cooperation where allegations were made that the bank had surreptitiously mortgaged the property of the Respondent No. 4 and since there was no transaction after 31.12.2001, he may not be held liable to pay interest after 31.12.2001. The Appellate Authority that is the Additional Secretary Cooperation set aside the

award of the Arbitrator and directed the parties to appear before the Arbitrator for decision afresh. Thereafter the Arbitrator held that the Respondent No. 4 was only liable to pay the principal loan amounts and interest amount upto 31.12.2001 the date when the cases were filed by the Plaintiff that is total outstanding amount and interest calculated upto date 31.12.2001. Costs of the case were also assessed. The Respondent No. 4 was given 60 days time to deposit the amount in question, failing which the bank was held entitled to recover the entire amount along with future interest. The Respondent No. 4 deposited the entire amounts within the time granted.

4. Thereafter the bank filed appeals before the Secretary Cooperation and this authority rejected the appeal holding that the conduct of the bank was not proper and that the bank had not acted in a fair manner with the loane and therefore the lone is entitled to the benefit granted to him.

5. These orders were passed on 8.9.2004. By means of these petitions, the orders dated 8.9.2004 have been challenged. These petitions have been filed on 4.7.2008 almost 3 years and 9 months after the original order was passed. Other than making a very general statement that copies had to be obtained and orders passed by competent authorities and decision taken by competent authority to approach this Court there is no explanation as to why the bank waited almost for 4 years to file the present petitions. In my view there is no explanation worth the name to explain the delay in filing the present petitions. Mr. Shrawan Dogra contended that public money is involved and therefore delay may not be taken into consideration. In my opinion in every case of public money the bank cannot take such a plea especially when there is no explanation for delay of almost 4 years.

6. Be that as it may, I have gone into the merits of the case also and find that the lone has in fact deposited the amount due within the period granted to him by the Arbitrator. This Court cannot loose sight of the fact that one time settlement scheme is applicable in such cases also, and the benefit given to the Petitioner is only with regard to future interest from the date of filing of the petition. He has paid the entire interest otherwise on the agreed rate. The authorities below have come to the conclusion that the bank did not act fairly in these petitions and these findings of fact cannot be set aside in these proceedings. The authorities were therefore justified in passing the impugned orders.

In view of the above discussion, I find no merit in these petitions which are accordingly rejected. No costs.