(2008) 02 P&H CK 0114

In the Punjab And Haryana At Chandigarh

Tarlochan Singh APPELLANT

Vs

Punjab Financial Corporation and Others RESPONDENT

Date of Decision : 05-02-2008

Acts Referred:
Constitution of India, 1950 — Article 14, 16
State Financial Corporations Act, 1951 — Section 29

Citation : (2008) 2 PLR 37

Hon'ble Judges : Satish Kumar Mittal, J;Rakesh Kumar Garg, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—In the present writ petition, the petitioner is claiming for the issuance of a writ in the nature of certiorari quashing the action of the respondents whereby unit of the petitioner situated in village Dhanowali has been resumed and further for a issuance of direction to the respondents to restore the unit of the petitioner on the ground that he is ready to pay the entire balance amount in terms of the One Time Settlement dated 3.11.2005 (Annexure P-3).

2. The petitioner who is the proprietor of M/s R.G. Floor Mills, located in village Dhanowali, Tehsil and District Jalandhar availed a loan of Rs. 4,20,000/- in pursuance of which he mortgaged the land in favour of the corporation. Initially, the petitioner paid the installments, however, later on there was default in payment of the loan installments. The respondents-Corporation on the request of the petitioner for effecting One Time. Settlement of his loan account under the Reserve Bank of India (RBI) guidelines issued a letter dated 27.3.2001 approving the one time settlement. As per this One Time Settlement arrived at between the parties, the petitioner was directed to pay an amount of Rs. 10.30 lacs out of which 25% i.e. 2.50 lacs was to be paid before 31.3.2001 and the balance amount in quarterly installments within a period of one year with 13% interest per annum.

3. It is alleged by the petitioner that in pursuance of this One Time Settlement, Annexure P-I, the petitioner made the initial payments. However, there was a default in making the subsequent payments. As a result thereof, the respondents-Corporation issued him a letter dated 26.5.2003 informing him that there was a default to the tune of Rs. 17.93 lacs with further interest from 1.4.2003 but no substantial payment has been received from him since long. Vide this letter, the petitioner was advised that in case he failed to make substantial payment on or before 30.5.2003, the Corporation will have no other alternative but to proceed further u/s 29 of the State Financial Corporations Act, 1951.

4. It is further the case of the petitioner that he again approached the respondents on 11.3.2005 for availing another opportunity for One Time Settlement Scheme and the said settlement was arrived at between the parties on 3.11.2005 vide letter Annexure P-3. It is the case of the petitioner that in terms of this settlement, the loan amount of the petitioner was settled at Rs. 7.26 lacs along with expenses (if any) and with further interest from 1.10.2004 payable in three years at the rate of 12% per annum against the outstanding balance in his loan amount of Rs. 25.08 lacs. Through this letter, it was also mentioned that penal interest of 2% over and above the normal rate shall also be chargeable for delayed payments. The petitioner has further alleged that in pursuance of this One Time Settlement dated 3.11.2005, he made payments of Rs. 27,500/- on 29.11.2005, Rs. 30,000/- on 26.9.2006, Rs. 50,000/- on 27.10.2006 vide Annexure P-4 to P-6 and Rs. 40,000/- on 29.11.2006 and Rs. 60,000/- on 28.11.2006 and further payment of Rs. 50,000/- on 31.3.2007. However, the petitioner has not shown any receipt/documents in support of the above mentioned three amounts.

5. The petitioner has further alleged that the respondents-Corporation had issued him a letter dated 23.2.2007 vide which he was directed to deposit a sum of Rs. 1.60 lacs in view of the settlement arrived at between the parties. However, due to financial crisis, he could not arrange the said amount and to his utter surprise, the respondents resumed his unit without even waiting for the period of expiry of the settlement i.e. 25.3.2008 despite the fact that he was ready to clear the outstanding amount by making full and final payment. The petitioner has relied upon his representation/letter dated 17.12.2007 to support his contention to the effect that he wanted to clear the loan amount in full and final settlement.

6. Sh. R.S. Chauhan, learned Counsel for the petitioner has vehemently argued that the action of the respondents in taking over his unit before the expiry date of (Annexure P-3) One Time Settlement between the parties is wholly illegal, arbitrary and discriminatory and in contravention of the provisions contained in Articles 14 and 16 of the Constitution of India on the ground that since the settled amount was to be deposited upto 25.3.2008 with interest, the respondents-Corporation should have waited upto till then especially having regard to the assurance of the petitioner to clear the outstanding amount. It is further the case of the petitioner that a substantial amount has already been

paid by the petitioner and for payment of remaining amount, the petitioner was entitled to atleast one opportunity to clear the amount before the expiry period of settlement.

7. We have learned Counsel for the petitioner and perused the averments made in the petition.

8. From the averments of the petition, it is crystal clear that the loan account was settled under RBI guidelines vide letter dated 27.3.2001 at an amount of Rs. 10.30 lacs. However, the petitioner defaulted and could not make the payment within the stipulated period as per the said settlement and therefore, the concession of One Time Settlement so granted to him vide letter dated 27.3.2001 stood automatically withdrawn. Not only this, vide Annexure P2, the petitioner was given another opportunity by the respondents-Corporation to make payment as per the settlement Annexure P1. However, the petitioner again could not make the payment. As per his own case, the petitioner was given concession for the second time by accepting One Time Settlement dated 3.11.2005 (Annexure P3) by the respondents-Corporation and his outstanding balance to the tune of Rs. 25.08 lacs was settled at a sum Rs. 7.26 lacs amount with expenses (if any) and with a further interest from 1.10.2004 payable in three years at the rate of l''2.50% per annum. As per this settlement, (Annexure P3) the respondents-Corporation acknowledged the receipt of Rs. 1.97 lacs by way of cheques and Pay Orders on 28.3.2005 and 11.8.2005. As agreed to by the petitioner, the balance amount was payable in 11 quarterly installments of Rs. 50,000/- each starting from 30.9.2005 to 25.3.2008. The petitioner had also submitted 11 post dated cheques for payment of balance settlement amount and he was also required to deposit the interest installments over the above the payment towards installments on due dates. It was also stipulated in the said agreement that in case of non payment of interest or any installments as per the above Schedule, the Corporation had the right to take back the assets immediately and proceed further to sell the same for recovery of dues in terms of loan documents. It was also submitted that the concessions extended under the Settlement Scheme for restoration of the unit also stood withdrawn and the outstanding amount became liable to be paid to the Corporation. The relevant clauses of this settlement Annexure P3 reproduced hereinafter below:

We further acknowledge having received Rs. 1.97 lacs by way of cheques and pay order on 28.3.2005 and 11.8.2005. As agreed by you, the balance amount is payable as under:

In eleven quarterly installments of Rs. 50,000/- each starting from 30.9.2005 to 25.3.2008.

We acknowledge receipt for the aforesaid eleven post dated cheques for the payment of balance settlement amount. You are also required to deposit interest installments over and above the payment towards installments on due dates.

Please note that the Corporation shall have right to take back the assets immediately, in case of non-payment of interest or any installments as per scheduled above and can further proceed for the sale of same for recovery of dues in terms of loan documents. The concessions extended under settlement scheme for restoration of unit shall also stand withdrawn and you shall become liable to pay the outstanding balance as per accounts books of the corporation in terms of mortgage deed executed by you.

9. However, it is clear that the petitioner has failed to adhere to the payment schedule as given above and has not made the payments of Rs. 50,000/- each of 11 quarterly installments starting from 30.9.2005 as stipulated. The petitioner has placed on record three receipts vide Annexure P4 to P6 showing the payment of sum of Rs. 1,07,500/- i.e. Rs. 27,500/- on 29.11.2005, Rs. 30,000/- on 26.9.2006 and Rs. 50,000/- on 27.10.2006. The petitioner has failed to place on record any other receipt in support of his assertion that he has also deposited a sum of Rs. 40,000/- on 29.11.2006, Rs. 60,000/- on 28.12.2006 and Rs. 50,000/- on 31.3.2007. Thus, the petitioner has failed to deposit the amount as stipulated in terms of the One Time Settlement. It seems that the petitioner does not want to make the payment and wants to delay the further proceedings by the Corporation in terms of the loan agreement between the parties. Even the so-called representation, Annexure P7, allegedly submitted by the petitioner seems to have been submitted to give an impression that the petitioner wants to make the full and final payment towards settlement of his loan amount. Though the petitioner has stated that his unit has been resumed yet he has not given any date on which the said action was taken against him. Thus, an adverse inference is drawn against the petitioner that he has withheld the relevant material from the knowledge of this Court. Even during the course of arguments, the petitioner has not made any offer to make any payment and his only argument was that the Corporation cannot take possession of the unit before the expiry of the loan date under One Time Settlement (i.e. 25.3.2008). We are of the view that since the petitioner has failed to make the payments as stipulated and therefore, the concession extended to him is no longer available and the Corporation is entitled to proceed further in accordance with law. Even otherwise, the petitioner has no right to force the respondent-Corporation to enforce the one Time Settlement as the same being a concession has not been availed of by the petitioner as stipulated.

10. Thus, keeping in view the facts and circumstances of the case, as discussed above, we find that the conduct of the petitioner is unfair and unreasonable which does not warrant interference in exercise of the extraordinary writ jurisdiction of this Court. Dismissed in limine with costs which are assessed at Rs. 5,000/-.

