

M/s. Lord Budha Society and Others Vs State Bank of Patiala and Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 12, 2013

Citation: AIR 2013 P&H 218 : (2014) 2 BC 588 : (2013) 171 PLR 146

Hon'ble Judges: Ritu Bahri, J; Hemant Gupta, J

Bench: Division Bench

Advocate: D.S. Patwalia, for the Appellant; Rakesh Gupta for Bank, for the Respondent

Final Decision: Allowed

Judgement

Hemant Gupta, J.

Challenge in the present writ petition is to communication dated 15.02.2012 (P-14) whereby the Debts Recover)

Appellate Tribunal, Delhi (for short "DRT") restrained the Bank from taking any coercive measures qua a residential house up to next date of

hearing. The petitioners have availed financial assistance from the respondent-Bank. To secure the loan advanced to the borrower, the following

properties were mortgaged:-

(a) Residential land and building at plot No. 1007 measuring 160 sq. yards at Dr. Mukherjee Nagar, Delhi in the name of Sh. Vinod Bansal;

(b) Residential land and building at plot No. 1089 measuring 160 sq yards at Dr. Mukherjee Nagar, Delhi in the name of Pishori Lal and Smt.

Amrit Kaur;

(c) Portion No. B-5, Lower Ground Floor built on Plot No. 9, Block No. 54, admeasuring 545 sq. ft. 9/54, Desh Bandhu Gupta Road, Karol

Bagh, Delhi in the name of Smt. Preeti Bansal;

(d) Land and building of school situated at Jhande Tehsil and District Ludhiana, in the name of petitioner No. 1 Society;

(e) Agricultural land measuring 8680 sq. yards situated at Village Maharajpur District Faridabad.

2. The impugned order dated 15.02.2012 came to be passed on an appeal filed by the petitioners herein after they entered into settlement with the

respondent-Bank on 11.08.2011 (P-3). The writ jurisdiction of this Court has been invoked by the Borrower and two of the guarantors against

the action being taken by the Bank on account of inability of the borrower to honour the time schedule given under the One Time Settlement (for

short "OTS") arrived at on 11.08.2011. The relevant terms of settlement read as under:-

(i) Upfront amount of Rs. 0.40 crore deposited by you has been appropriated in your a/c with us.

(ii) The remaining amount of Rs. 9.70 crore shall be deposited by 31.10.2011 by sale of mortgaged properties/raising loans on properties of the

members of societies from friends and relatives.

(iii) Title deed of one residential property bearing House No. 1089, Dr. Mukherjee Nagar, Delhi (measuring 160 sq yards) will be released after

receipt of 20% (Rs. 2.02 crore) of the compromise amount.

(iv) Title deed of the remaining properties will be released only after receipt of the entire balance compromise amount of Rs. 7.68 crores.

(v) Both the borrowers and guarantors to the advance will execute a consent decree in DRT within 3 months of the approval of the compromise

proposal.

(vi) In case of any default in payment as per schedule advised herein above, the Bank may at its sole discretion treat the compromise as failed and

take appropriate measures/action including action under SARFAESI Act, 2002 for recovery of its outstanding including interest at contracted rate.

3. In pursuance of the said settlement, the petitioners deposited a sum of Rs. 1 crore on 31.10.2011 (P-6). The petitioner sought time till

31.03.2012 to make the payment of the remaining amount. On 06.02.2012, the request of the borrower was partly accepted when it was inter alia

communicated to the following effect:

2. In this connection, we are unable to accede to your request for extension of further time for payment of the OTS amount and request you to

deposit the full OTS amount with the Bank with interest for the delayed period without any further delay.

4. Thereafter the petitioners deposited another sum of Rs. 50 lacs on 02.03.2012. It is then the petitioners invoked the writ jurisdiction of this

Court on 04.03.2012.

5. On 07.03.2012, this Court permitted the petitioner to pay a sum of Rs. 1,50,00,000/- on or before 15.03.2012 and ordered status quo be

maintained in the meanwhile. It was thereafter on 02.05.2012, the settlement was revoked by Bank. The relevant extract of the said

communication reads as under:

2. Since you have defaulted in payment of the full OTS amount as per the terms of the approval, therefore, the said compromise stands failed and

the OTS approval has been declared null and void in terms of the letter under reference.

3. We, therefore advise you to deposit the entire outstanding dues on the account along with upto date interest immediately. However, please note

that this letter is without prejudice to our rights and claims for recovery of Bank's dues through any recourse as deemed fit by the bank.

6. The said communication has been challenged by the petitioners in CWP No. 9186 of 2012. Thereafter, on 5.09.2012, the petitioners were

directed to deposit Rs. 75 lacs each for the months of October and November, 2012, which amount the petitioners have deposited on

14.11.2012. On 22.11.2012, the petitioners again sought time to deposit another sum of Rs. 1,50,00,000/-. However, only Rs. 50 lacs was

deposited. On 05.02.2013 when the writ petition came up for hearing before this Court, learned counsel for the petitioners undertook to pay the

entire remaining amount of settlement of Rs. 4.07 crores along with accrued interest on or before 30.03.2013. Out of which, a sum of Rs.

1,50,00,000/- was undertaken to be paid on or before 28.02.2013 and the remaining amount along with interest was undertaken to be paid on or

before 30.03.2013.

7. On 05.03.2013, Mr. Bansal (chairman of petitioner No. 1) stated that a sum of Rs. 1,50,00,000/- has been deposited on 04.03.2013. On the

said date, the Bank was directed to communicate the calculations of interest to enable the petitioner to deposit the remaining amount on or before

30.03.2013.

8. On 02.04.2013 when the case was taken up for hearing, learned counsel for the petitioners pointed out that the interest calculations have been

received by the petitioners on 29.03.2013 and sought a week's time to make the entire payment along with interest through demand drafts.

9. In terms of the said undertaking, learned counsel for the petitioners has handed over a draft of Rs. 3,87,45,633/- towards principle amount and

the accrued interest upto 31.03.2013 under the settlement for onward transmission to Mr. Gupta. The said amount is as per the calculations given

by the Bank to the petitioners, which is inclusive of interest upto 31.03.2013. The learned counsel for the petitioners has further undertaken to pay

interest for the period 01.04.2013 till today within one week.

10. Mr. Gupta argued that since the petitioners have defaulted to comply with the terms and conditions as per the settlement dated 11.08.2011,

therefore, the Bank has rightly revoked the settlement and is entitled to recover the entire due amount along with contractual rate of interest.

11. We have heard learned counsel for the parties and find that there is default on the part of the borrower to make the payment of the settlement

amount. The Bank has sought deposit of entire settlement amount with interest for the delayed period without any further delay even after the

expiry of stipulated period mentioned in the settlement. The said communication unequivocally leads to the inference that the time prescribed in the

settlement was not the essence of the contract. In case of delay, the Bank is thus entitled to claim interest for the delayed period.

12. In view of the said fact, the Bank is entitled to the interest for the delayed payment of the settlement arrived at on 11.08.2011. Since the

petitioners have deposited the amount and also paid the interest up to 30.03.2013, as per the calculations given by the Bank, we do not find any

merit in the argument that the Bank has right to revoke the settlement.

13. The settlement arrived at is in public interest, as it ensures payment of the due amount to the Bank and also absolves the Public sector

undertaking to take recourse of cumbersome process of sales of assets by auction. Therefore, in the larger public interest, the payment of the

settled amount along with accrued interest is considered appropriate.

14. Consequently, order dated 15.02.2012 (P-14) is set aside. The respondent-bank is directed to release the title deeds of the petitioners as well

as that of the guarantors. Mr. Gupta, learned counsel for the Bank has handed over all the title deeds to Mr. Patwalia for handing over to the

petitioners & the guarantors of the borrowers. However, the interest for the period from 01.04.2013 till today shall be paid by the petitioners,

within one week from today. The petitions are accordingly allowed. The order dated 02.05.2012 subject matter of challenge in CWP No. 9186 of

2012 is set aside. CWP No. 4348 of 2012 is disposed of in view of the payment of settlement amount only subject to payment of interest for the

period 01.04.2013 till 12.04.2013.