

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 27th September, 2010.

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W.P.(C) No.7887/2008

VINOD KUMAR

..... PETITIONER

Through: Mr. Sanjeev Kumar Jha, Advocate

Versus

CANARA BANK

..... RESPONDENT

Through: Ms. Seema Gupta, Advocate

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? No
2. To be referred to the reporter or not? No
3. Whether the judgment should be reported in the Digest? No

RAJIV SAHAI ENDLAW, J.

1. The petitioner Vinod Kumar claims:
 - (i) That M/s Global Elec-Tech Ltd. (hereinafter called the Company and which is not a party to this petition) took loan from the respondent Bank and gave security therefor of its factories at Daman and Pondicherry, hypothecated stocks lying therein and book debts as well as two three party sureties who pledged their residential properties at C.R. Park, New Delhi & DLF, Gurgaon. The petitioner claims to have been a Director of the Company and also claims to have stood as a guarantor and

given his personal guarantee to the Bank for the repayment of financial assistance aforesaid to the Company.

- (ii) It is further the case of the petitioner that the account of the Company with the respondent Bank became a Non- Performing Asset (NPA) on 30th September, 2004; that the company with the permission of the respondent Bank sold its factory at Daman for ₹65,00,000/- and deposited the said ₹65,00,000/- with the respondent Bank; that the Company offered one time settlement (OTS) to the respondent Bank; that from time to time various proposals were discussed; that the respondent Bank invited the Company for discussion on 1st March, 2007 in this regard; that in the said meeting a OTS for ₹1.25 crores was agreed (there is no document under signatures of both the parties recording the said settlement); that the respondent Bank vide its letter dated 26th March, 2007, with reference to the compromise proposal dated 1st March, 2007 communicated that the same has been permitted by the controlling authorities as under:

“Title Deeds pertaining to the property at Pondicherry shall be released by the Branch after receiving credit of ₹105.00 lacs in your A/c with our Branch on or before 31st March, 2007.”

- (iii) That the Company deposited a sum of ₹1.25 crores with the respondent Bank on 28th March, 2007 and the respondent

Bank released the Title Deeds of the property of the Company at Pondicherry and also executed the documents releasing the charge thereon; that the respondent Bank however did not release the charge on the other properties and after more than one year vide its letter dated 20th June, 2008 informed the Company that the appropriate authority of the Bank had not executed the OTS proposal of the Company in view of the substantial value of the remaining properties secured with the Bank. Averring that the respondent Bank was backtracking on the OTS for ₹1.25 crores which had already been received, the present petition has been filed seeking writ against the respondent Bank restraining the respondent Bank from withdrawing from the settlement and from acting in contravention of the settlement and for directing the respondent Bank to accept the settlement aforesaid for ₹1.25 crores.

2. Notice of the petition was issued and the pleadings got completed. The counsels for the parties have been heard.

3. In my opinion, the petition is liable to be rejected merely on the ground that the petitioner has no locus to claim the reliefs aforesaid. The settlement (OTS) alleged, was between the Company and the respondent

Bank. The petitioner claims to be merely one of the Directors of the Company and a guarantor for repayment of the loans advanced by the respondent Bank. The right, if any, of specifically enforcing the alleged settlement is of the Company and not of the petitioner. The petitioner even if may have represented the Company in the settlement with the respondent Bank has no right to file the present petition in his personal capacity as has been filed. The petition appears to have been filed merely to embroil the respondent Bank in litigation and to delay the payment of dues and / or in an attempt to thwart any action by the respondent Bank under the provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) with respect to the property at DLF, Gurgaon mortgaged with the respondent Bank. The petition is thus found to be an abuse of the process of this Court and is liable to be dismissed with heavy costs. However, since notice of the petition was issued and pleadings have been completed, it is deemed expedient to deal with the pleas on merits also.

4. The respondent Bank in its counter affidavit has denied the settlement as claimed by the petitioner. It is the stand of the respondent Bank that the Company on 1st March, 2007 had only sought release of charge on its Pondicherry property and which was agreed to against payment of ₹1.05 crores. It is stated that upon receipt of ₹1.25 crores from the petitioner, ₹1.05 crores were adjusted to the loan account against the release of the

property at Pondicherry and the balance amount of ₹20,00,000/- in the No-Lien Account till the acceptance of the offer of OTS proposal submitted by the Company and pending consideration by the appropriate authorities of the respondent Bank.

5. Though elaborate arguments have been addressed by the counsel for the petitioner and which had to be responded by the counsel for the respondent Bank but in my view in the absence of any settlement agreement in writing, the question whether any settlement as claimed by the petitioner took place on 1st March, 2007 or not entails disputed questions of fact and which cannot be adjudicated in writ jurisdiction. The respondent Bank in its counter affidavit has stated that proceedings for recovery of the amounts due (and which are stated to be of over ₹2 crores) have already been initiated against the Company, petitioner and the other Directors. If at all, it is the case of the Company and / or the petitioner that there was a settlement, the said question can be adjudicated before the Debt Recovery Tribunal (DRT). It is thus not as if the petitioner is without any remedy. It is felt that any discussion in this proceeding qua the arguments raised by the counsel for the petitioner in support of the settlement and opposed by the counsel for the respondent Bank may prejudice the findings of the other appropriate fora competent to adjudicate on the said factual controversy. Suffice it is to state that it is found incongruous:

(i) as to why if a full and final settlement had been arrived at and

upon payment of ₹1.25 crores nothing more remained to be paid to the respondent Bank, why the letter dated 26th March, 2007 supra of the respondent Bank did not refer to the sum of ₹1.25 crores and referred only to release of Title Deeds of the property at Pondicherry upon receipt of ₹1.05 crores;

- (ii) why the letter dated 26th March, 2007 did not refer to release of Title Deeds of other properties of the Company, petitioner and other guarantors deposited with the respondent Bank;
- (iii) why the petitioner and/ or the Company for all this time did not insist upon release of Title Documents of the other properties;
- (iv) why no proper record of settlement was obtained and settlement is sought to be shown from a reference here and a reference there in the correspondence.

Unless all the said questions are answered, it cannot be said that the settlement sought to be enforced in this writ petition was arrived at.

6. The counsel for the petitioner has referred to:

- (i) ***Sardar Associates Vs. Punjab & Sind Bank*** (2009) 8 SCC 257.
- (ii) ***Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd.*** AIR 1983 Supreme Court 848.

- (iii) *The Comptroller & Auditor General Vs. K.S. Jagannathan* AIR 1987 SC 537.
- (iv) *M/s Calcutta Chemical Co. Ltd. Vs. The Assistant Collector of Customs* AIR 1958 Calcutta 694.
- (v) *S.K. Ghose Vs. V.C. Utkal University* AIR (39) 1952 Orissa 1.
- (vi) *Ram & Shyam Company Vs. State of Haryana* AIR 1985 SC 1147.

But none of which is found applicable in view of the position aforesaid.

7. The counsel for the respondent Bank has referred to *United Bank of India Vs. Satyawati Tondon* 2010 STPL (Web) 546 SC expressing concern that despite repeated pronouncements of the Apex Court, the High Courts continue to ignore the availability of the statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of Banks and other financial Institutions to recover their dues and expressing hope that in future the High Courts will exercise their discretion with greater caution.

8. Before parting with the case mention must also be made of CM No.8168/2010 filed by the petitioner in this case seeking to restrain the Bank from proceeding under the provisions of the SARFAESI Act. No interim relief has been granted to the petitioner. However, in view of the petition

itself having been found to be not maintainable and not finding even a *prima facie* case of the settlement having been arrived at and on which basis alone the proceedings under the SARFAESI Act are sought to be stayed, no case for staying the proceedings under the SARFAESI Act also is made out.

9. There is no merit in the petition; the same is dismissed. Having found the petition to be in abuse of the process of this Court, the petitioner is also burdened with costs of ₹50,000/- payable to the respondent Bank. The petitioner is directed to pay the said costs within four weeks failing which the same shall incur simple interest @12% per annum and shall be recoverable by the respondent Bank from the petitioner while recovering the other dues from the petitioner or otherwise.

**RAJIV SAHAI ENDLAW
(JUDGE)**

27th September, 2010

‘gsr’

(Corrected and released on 25th November, 2010)