IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 10.07.2015

C.W.P.No.18927 of 2014

Baldev Singh ...Petitioner

Versus

State of Punjab & others ...Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Deepak Arora, Advocate,
for the petitioner.

Mr. Vinod S. Bhardwaj, Addl. AG, Punjab,
for respondent Nos.1, 3 & 4.

Mr. K.B.Raheja, Advocate,
for respondent No.2.

HEMANT GUPTA, J.

Challenge in the present writ petition is to the communication dated 07.05.2014 (Annexure P-16), whereby a notice was served by the Naib Tehsildar, Dinanagar to the petitioner on the basis of recovery certificate issued by the Punjab Financial Corporation for a recovery of Rs.1,91,63,428/-.

The petitioner availed a loan of Rs.10 lacs for the construction of building and purchase of plant & machinery in the year 1996. The petitioner mortgaged a plot measuring 3 kanals 14 marlas to secure the said loan. In terms of the documents executed, the petitioner made himself liable to pay interest at the rate of 18.5% per annum on quarterly basis. The petitioner defaulted in making payments of the installments, which led the respondent-corporation to take possession under Section 29 of the State Financial Corporation Act, 1951 (for short 'the Act') on 31.08.1999. The petitioner is alleged to have made some payments thereafter. In order to realize the due amount from the petitioner, the property was put to sale in the year 2011 and a sum of Rs.42 lacs was realized. It is, thereafter, the petitioner came to know that a sum of Rs.1,91,63,428/- is still due and payable, which is sought to be recovered from the petitioner herein.

The sole argument raised by the petitioner is that after the possession of the mortgaged property was taken under Section 29 of the Act and later sale, the respondent cannot charge any interest on the amount payable by the petitioner.

In a separate reply filed on behalf of respondent No.2, it is inter alia asserted that the rate of interest chargeable and the terms of repayment of the loan are mentioned in the mortgage deed and that the interest is being charged strictly in terms and condition of the mortgage deed and the petitioner never approached the Corporation making grievance of charging of interest.

We have heard learned counsel for the parties on the question; as to whether the interest can be claimed by the State Financial Corporation after the possession of the property mortgaged was taken under Section 29 of the Act or even after sale thereof.

The possession of the mortgaged property is part of the process to realize the due payable under the contract of loan. With possession of the property, the loan agreement does not come to an end. It subsist till such time, all the dues in terms of the loan agreement are paid or the transaction of loan is settled either by the process of one time settlement or otherwise. Similar question has been examined by the Hon'ble Supreme Court in a judgment reported as Punjab Financial Corporation Vs. Surya Auto Industries (2010) 1

SCC 297, wherein it has been held that payment of interest is a condition of mortgage and, therefore, such condition cannot be varied by an order of Court. The relevant extract from the judgment reads as under:

> “25. The High Court also committed serious error in declaring that he appellant-Corporation will be entitled to charge simple interest at the rate of 10% w.e.f. 1.4.2003 i.e., after expiry of six months from the date of taking over of the unit. Undisputedly, the respondent had not challenged the terms of loan agreement. Therefore, the High Court could not have suo motu altered terms of agreement and directed the appellant to make fresh calculation of the outstanding dues and allowed the respondent to pay the amount as per fresh demand by selling the mortgaged property. This approach of the High Court is ex facie contrary to the law laid down in U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. (1993) 2 SCC 299 and Haryana Financial Corporation Vs. Jagdamba Oil Mills (2002) 3 SCC 496.
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> 26. The direction given by the High Court for review of pending cases in the light of judgment of this Court in Central Bank of India Vs. Ravindra (2002) 1 SCC 367 is also unsustainable because, as mentioned above, the High Court was not called upon to examine the legality or otherwise of the terms of agreement entered into between the appellant-Corporation and respondent under which the latter was obliged to pay interest at the particular rate with periodical rests. Moreover, conclusion No.3 contained in para 55 of that judgment clearly postulates that stipulations incorporated in the contract entered into and binding on the parties shall govern their substantive rights and obligations in the matter of recovery and payment of interest.”

In view of the judgment in Surya Auto Industries’ case (supra), we do not find that the grievance of the petitioner regarding charging of interest in terms of the mortgage deed after the possession was taken by the Corporation and/or its sale can be said to be illegal or unwarranted. Even after mortgaged property is sold, the debt does not come to an end. It is only that recovery proceedings against the mortgaged property would come to an end, but the liability of a debtor will continue to exist against which the Corporation can take steps to recover in accordance with law.

In view of the above, we do not find any merit in the present writ petition. The same is accordingly dismissed.

(HEMANT GUPTA)
JUDGE

10.07.2015
Vimal

(LISA GILL)
JUDGE