IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 20877 of 2014
Date of Decision: 05.02.2015

Barinder Kaur and others ...Petitioners

versus

Punjab & Sind Bank and others ....Respondents

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH.

Present : Mr. S.S.Salar, Advocate, for the petitioners.
Mr. BPS Dhaliwal, Advocate, for respondents No.1 to 3.
Respondents No. 4 to 6 ex-parte vide order dated 12.11.2014.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

Rule. Rule returnable forthwith.

2. The petitioners seek a writ of certiorari quashing a letter dated 08.09.2014 (Annexure P-6) issued by the first respondent-bank calling upon them to reconsider and enhance their offer for settlement stating that the value of the security created in the first respondent's favour was much higher than the amount offered by them for settlement. The petitioners also seek an order directing the respondents' to issue a 'No Due Certificate' and to return the title deeds of the property secured in favour of the respondents.

The petitioners contend that there was accord and satisfaction and there is now no amount due by them to respondent No.1.

3. We would normally not grant any relief as it would always be open to the petitioners to defend themselves against any claim made or action taken by the first respondent to recover its dues and to

file appropriate proceedings to redeem the mortgage.

The exceptional facts of this case, which are admitted, however, persuaded us to exercise our extra ordinary jurisdiction as we find the first respondent's conduct to be arbitrary, unfair and contrary to law.

The case in brief is this. One Bhagwant Singh was the guarantor in respect of the amounts due by respondent No.4 to respondent No.1 and had mortgaged his properties in favour of respondent No.1. The petitioners have inherited this property. The petitioners and respondent No.1 entered into a settlement by which the first respondent accepted a sum of ₹ 1,20,000,00/- against its claim of ₹ 1,80,000,00/-. The entire amount was paid by the petitioners and received by the first respondent in full and final satisfaction of the claim. The first respondent does not contend that the settlement was invalid in any respect whatsoever or unconscionable. A year later, the first respondent sought an increase in the amount only on the ground that the value of the mortgaged property is higher than the amount at which the claim of respondent No.1 was settled. This we have held is totally impermissible.

4. Respondent No.1 had advanced certain credit facilities in favour of respondent No.4-M/s KMT Woods (P) Ltd. of an aggregate value of about ₹ 34,50,000/-. The said Bhagwant Singh had issued a personal guarantee to secure the repayment of the amounts by respondent No.4 and also mortgaged his agricultural land with the bank. Bhagwant Singh died leaving behind his son Anoopinder Singh. On 02.02.2004, Anoopinder Singh also died leaving behind the three

petitioners-his widow and his children. The petitioners have inherited the mortgaged property.

5. On 17.07.2002, the first respondent-bank filed an Original Application (O.A.) No. 616 of 2002 for recovery of an amount of ₹ 66,25,716/- plus interest. On 02.06.2011, said O.A. was allowed against respondent No.4 i.e. principal borrower and the guarantors including the petitioners' predecessor-in-interest. On 14.08.2012, the petitioners filed an application for setting-aside the ex-parte proceedings which was dismissed by the Debts Recovery Tribunal on the ground of limitation. The Debts Recovery Appellate Tribunal allowed the petitioners' appeal and directed the Debts Recovery Tribunal to hear the petitioners' application on merits. The proceedings are pending before the Debts Recovery Tribunal.

6(A) During the pendency of the proceedings, a loan camp was held by the first respondent-bank. Pursuant to the negotiations between the parties in the presence of said Chief General Manager and Zonal Manager as well as other higher officers of the first respondent bank a settlement was arrived at. As against a claim of ₹ 1,80,000,00/-, the parties admittedly settled the matter for a sum of ₹ 1,20,000,00/-.

(B) The petitioners by a letter dated 18.09.2013 offered an amount of ₹ 1,20,000,00/- for adjustment of the same in full and final settlement. It was stated that the same was done to avoid humiliation and the petitioners reserved their right to claim the amount from respondents No. 4, 5, 6 and 7. Respondents No. 5, 6 and 7 are the Directors of respondent No.4 the principal debtor. The petitioners undertook to deposit ₹ 50,000,00/- by 30.09.2013; ₹

50,000,00/- by 31.10.2013 and the balance ₹ 20,000,00/- by 30.11.2013. In respect thereof, the petitioners forwarded post-dated cheques.

(C) The first respondent by a letter dated 23.09.2013 stated as under:-

> "Dear Sir,
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> Reg: Settlement of your Account.
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> As per request dated 18.09.2013 of Shri Jagjit Singh (POA Holder of legal heirs of guarantor, Late Sh. Bhagwant Singh) son of Sh. Dalip Singh, resident of Model Road, Street No.1, Nabha, District Patiala, the competent authority in principal has agreed to accept your offer of Rs. 1,20,00,000.00 (Rs. One Crore twenty lacs only) for one time settlement for adjustment of the captioned account in full and final, subject to the condition that:-
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> 1. Rs. 50,00,000.00 to be deposited upto 28.09.2013.
> 2. Rs. 50,00,000.00 to be deposited upto 31.10.2013.
> 3. Rs. 20,00,000.00 to be deposited upto 30.11.2013.
>
> The settlement will be cancelled if above conditions are not fulfilled."

7. The cheques were honoured. The bank appropriated the amounts without any reservation, protest or demur. The letters dated 18.09.2013 and 23.09.2013 make it clear that the petitioners offered the sum of ₹ 1,20,000,00/- in full and final settlement of the dues and that the first respondent bank accepted the settlement. There was complete accord and satisfaction.

The words "in principal" make no difference in the facts and circumstances of the case. The tender of the amount of ₹ 1,20,000,00/- was expressly made in full and final satisfaction of the account. The first respondent-bank was not entitled to accept the tender and repudiate the condition. Indeed the first respondent-bank accepted the tender in full and final settlement and stated that the settlement would be cancelled only if the conditions were not fulfilled. If in fact the settlement was not arrived at, there would be no question of canceling the same. The first respondent-bank fairly and rightly did not even argue to the contrary.

8. The petitioners, therefore, justifiably considered the matter as at an end. The first respondent-bank a year later by its impugned letter dated 08.09.2014 called upon the petitioners to propose a fresh settlement only on the ground that the realizable value of the security kept with it was higher than the amount at which the dues were settled. Even before us, the only contention was that the value of the security offered by said deceased Bhagwant Singh was much higher than the amount paid under the said settlement. It was not open for the first respondent-bank especially a year later to ignore the said settlement merely because it found the value of the security to be higher than the amount at which the account was settled.

Our decision to interfere is reinforced by the following aspects of the case. The first respondent-bank admits that the settlement was validly entered into. It is not the first respondent's case that the officers who entered into the settlement were not authorized to do so. Nor is it the first respondent's case that the settlement was fraudulently entered into between the parties. Nor is it their case that the first respondent was misled about the value of the security. It is not the first respondent's case that the settlement was unconscionable. Indeed it can not be said to be unconscionable for against an alleged claim of ₹ 1,80,000,00/-, the parties arrived at a full and final settlement of ₹ 1,20,000,00/-. It is not the first respondent-bank's case that the petitioners misrepresented anything or suppressed any relevant facts from it.

9. In the ultimate analysis therefore, the settlement was admittedly valid and legal in every respect. The first respondent has received the entire amount under the settlement in full and final satisfaction of its dues. It is not open to the first respondent bank to abandon the settlement on the ground that a year later it realized that the value of the security was higher than the amount at which the matter was settled.

We would normally have left the petitioners to raise this contention in the proceedings before the Debts Recovery Tribunal and in any other proceedings that the first respondent-bank may adopt. The case before us, however, admits of no complication as it raises no dispute whatsoever. There is not even a semblance of a defence on the part of the respondent-bank. It is in these exceptional circumstances that we have decided to exercise our extra ordinary writ jurisdiction under Article 226 of the Constitution of India.

10. We reiterate that it is in the exceptional facts of this case that we have exercised our extra ordinary writ jurisdiction. Had there been the slightest doubt or dispute we would not have done so. The action is liable to be quashed being totally arbitrary, unfair and contrary to law.

11. In the circumstances, the Rule is made absolute in terms of prayers (i) and (ii) which read as under:-

i) Issue a writ in the nature of certiorari quashing of the letter dated 08.09.2014 (Annexure P-6) whereby the bank has asked the petitioner to again submit proposal for one time settlement after accepting payment as per calculations and offer of bank.

ii) Issue a writ in the nature of mandamus directing the respondents to issue 'No Due Certificate' to the petitioners and return the title deeds of the land of the petitioners to the petitioners.

It is declared that no amounts are due and payable by the petitioners to the first respondent-bank.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

(AUGUSTINE GEORGE MASIH)
JUDGE

05.02.2015.
'ravinder'