IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.15437 of 2015 (O&M)
DATE OF DECISION: 12.04.2016

Siddharath Verma

…..Petitioner

versus

Authorised Officer, Indiabulls Housing Finance Limited and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE

HON'BLE MR.JUSTICE ARUN PALLI

Present: Mr. I.P. Singh, Advocate for the petitioner

Mr. Sumeet Mahajan, Senior Advocate with
Mr. Karanvir Singh Khehar, Advocate and
Mr. Amit Kohar, Advocate for respondent Nos.1 & 2

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE:

The petitioner has challenged a sale notice dated 28.06.2015 by which a residential house is sought to be auctioned. The petitioner has also sought a writ of mandamus directing respondent Nos.1 and 2 to accept an OTS and to release the property in his favour in terms of a tripartite agreement dated 31.01.2011. The petitioner also seeks to have set aside an order dated 12.01.2015 passed by the Debts Recovery Appellate Tribunal by which the petitioner's appeal has been dismissed and the appeal of respondent Nos.1 and 2 has been allowed.

2. Respondent No.2 is Indiabulls Housing Finance Limited. Respondent No.1 is the Authorised Officer of

respondent No.2. Respondent No.3 is the borrower and respondent No.4 is the Debts Recovery Appellate Tribunal.

3. Respondent No.2 advanced financial facilities to respondent No.3. It has not advanced any amount to the petitioner. Nor has the petitioner guaranteed the dues of respondent No.3 to respondent No.2.

4. We are constrained to record that respondent No.2, the financial institution, has unfortunately taken an extremely unfair and unreasonable stand. The case, in a nutshell, is this. Amounts were due and payable by respondent No.3 to respondent No.2. The dues were not guaranteed by the petitioner. Respondent No.3 had mortgaged a residential property in favour of respondent No.2 to secure the repayment of the amounts due by him to respondent No.2. The petitioner was the 3rd respondent's tenant. A tripartite agreement was entered into between the petitioner, respondent No.2 and respondent No.3 whereby the mortgaged property was sold to the petitioner for a consideration of Rs.80 lacs out of which Rs.26 lacs was payable to respondent No.3 and Rs.54 lacs was payable to respondent No.2 on behalf of respondent No.3. The petitioner paid the amount of Rs.26 lacs to respondent No.3. The petitioner, although after some delay, paid an amount of Rs.70.50 lacs to respondent No.3, although he was required to pay respondent No.2 only Rs.54 lacs. The agreement does not provide for interest. Even assuming that interest is payable on ground of equity, the excess amount of Rs.16.50 lacs paid by the petitioner to respondent No.2 would, in our opinion, in

the facts and circumstances of this case, meet the ends of justice.

The property was sought to be auctioned by respondent No.2 under the SARFAESI Act at a time when the petitioner had not paid the entire dues of respondent No.2. Pursuant to the 2nd respondent's application under Section 14, the possession was directed to be taken from the petitioner as the amount under the agreement had, at that time, not been paid. The DRT permitted the property to be auctioned, but directed the petitioner's possession to be restored as he was admittedly in possession earlier. The DRAT in an appeal filed by respondent No.2 reversed the order in so far as it directed the petitioner to be put in possession.

When these orders were passed, the petitioner had not paid the entire amount due under the agreement. Subsequently, as noted earlier, the entire dues under the agreement and, in fact, an amount of Rs.16.50 lacs in excess thereof has been paid. Despite the same, respondent No.2 seeks, on the one hand, to have the agreement cancelled and, on the other hand, insists upon retaining the entire amount of Rs.70.50 lacs. This attitude can hardly be justified.

5. The petitioner claims to have been the 3rd respondent's tenant in the residential premises which had been mortgaged by respondent No.3 in favour of respondent No.2 to secure the amounts due by respondent No.3 to respondent No.2. It is, therefore, not necessary to consider the disputes between respondent Nos.2 and 3. The entire dispute as far as

the petitioner is concerned is in respect of a tripartite agreement dated 31.01.2011 entered into between the petitioner, respondent No.2 and respondent No.3 who are referred to therein as the second party, the confirming party and the first party, respectively.

6. The agreement recites that respondent No.3 is the owner of the premises, a residential house admeasuring 500 square yards. It refers to the credit facilities granted by respondent No.2 to respondent No.3, the defaults committed by respondent No.3 in repayment thereof and that respondent No.3 was willing to settle the dues of respondent No.2 for Rs.54 lacs by selling the said property to the petitioner and that the petitioner had agreed to purchase the same. Under the agreement, respondent No.3 agreed to sell the property to the petitioner for a consideration of Rs.80 lacs. Under Clause-3, the petitioner was required to pay Rs.5.50 lacs as earnest money directly to respondent No.2 at the time of signing the agreement whereupon respondent No.2 was to issue a no-objection certificate letter to PUDA for issuance of a permission to transfer the property in favour of the petitioner. This earnest money was admittedly paid. The other relevant provisions of the agreement are as follows:-

> "1. ……………………………………………………………………………..
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> 2. That second party has agreed to pay the settlement amount of Rs.54,00,000/- (Rupees Fifty Four Lakhs only, as per Schedule given below, to the confirming Third party i.e. Indiabulls Housing Finance Limited and confirming Third party will issue No Objection Certificate (NOC) in this respect after receipt of this payment.

S. No.	LAN No.	SETTLEMENT AMOUNT Rs.	PAYMENT SCHEDULE BY	Mode of payment

			31.01.2011	15.02.2011	
1.	HHEPAT00013637	Rs.2642429/-	Rs. 275000/-	Rs. 2367429/-	DD/ Cheque*
2.	HHEPAT00005571	Rs.2757571/-	Rs. 275000/-	Rs. 2482571/-	DD/ Cheque*
	TOTAL:	Rs.5400000/-	Rs.550000/-	Rs.4850000/-	

3. ….…….…….………………………………………………………………………………………………………..

4. That the second party will pay the balance amount of the settlement, i.e. Rs.48,50,000/- (Rupees Forty Eight Lakhs and Fifty Thousand Only) on 15.02.2011 but of the sale consideration price to the confirming party as per the settlement letter dated 24.01.2011, issued by the confirming Third party.

5. ….…….…….………………………………………………………………………………………………………..

6. That further it has been agreed by and between the parties in an unequivocal terms that in case the Second party does not perform its part of the contract in such case, the entire earnest money paid by the second party shall not be refunded back to second party and second party shall have no right to claim anything in respect thereof from the Third party.

7. That the First party has already given the possession of the property in question to the second party.

8. That Second party had already paid Rs.22,11,070/- (Rs. Twenty two lacs eleven thousand seventy only) towards EMI on behalf of First party to the confirming party (IHFL).

9. That Confirming Party will issue No Dues Certificate in respect of the loan facility and also issue mortgage release certificate in respect of the property in question to the Second Party after receiving the full and final payment as per the settlement letter and the first party will have no objection to this effect.”

7. The petitioner, admittedly, paid an amount of Rs.5.50 lacs on 31.01.2011 i.e. the date of the signing of the agreement and Rs.5 lacs, 15 lacs, Rs.25 lacs and Rs.20 lacs on 24.05.2011, 30.10.2013, 30.7.2015 and 20.02.2015, respectively.

The payments were indeed made beyond the time prescribed in the agreement. That, however, makes no difference in the facts and circumstances of this case. The payments have been accepted by respondent No.2. It is true that the payment of Rs.5 lacs was made after the 2nd respondent attempted to take possession. Respondent No.2, however, did not take possession upon the payment of Rs.5 lacs. Respondent No.2, therefore, impliedly if not expressly, extended the time for payment. It is also true that the sum of Rs.15 lacs was paid on 30.10.2013 as a condition precedent to the maintainability of the petitioner's appeal. Further the amounts of Rs.25 lacs and Rs.20 lacs were paid on 30.07.2015 and 20.02.2015 as recorded in the orders dated 30.07.2015 and 19.01.2016. The order dated 30.07.2015 recorded that the petitioner tendered the demand draft of Rs.25 lacs to show his *bona fides*. The Division Bench directed the sale not to be confirmed upon the payment of Rs.25 lacs. The said sum having been paid, the sale was not confirmed. By the order dated 19.1.2016, the Division Bench directed that in the event of the petitioner failing to pay a sum of Rs.20 lacs within a period of one month the stay granted vide order dated 30.07.2015 would stand vacated. The amount of Rs.20 lacs was accordingly paid.

8. Although the amounts have been paid as noted in the orders, respondent No.2 was not bound to accept the same. It, however, accepted the amounts and adjusted the same towards the consideration payable under the agreement. In the result, therefore, the petitioner paid an amount of Rs.26 lacs to respondent No.3. Further, the petitioner has paid an aggregate

amount of Rs.70.50 lacs to respondent No.2 as against the amount of Rs.54 lacs payable by him to respondent No.2 under the agreement.

9. We would have expected respondent No.2 to have accepted this amount and to have performed its obligation under the agreement. It is important to note that the agreement does not provide for interest. Our attention has not been invited by the learned counsel appearing on behalf of respondent No.2 to any provision that entities it to interest under the agreement. Respondent No.2, however, demands interest from the petitioner at the rate at which, according to it, interest is payable by its constituent, namely, respondent No.3. However, the petitioner is neither a constituent of respondent No.2 nor a guarantor of respondent No.3. The petitioner, therefore, cannot be bound by the agreement between respondent No.2 and respondent No.3. The rights and liabilities of the petitioner are covered only by the agreement.

10. Moreover, as per the terms and conditions of the agreement the sale of the property is complete upon the parties having entered into the agreement. Under Clause-9, respondent No.2 is bound to issue a mortgage release certificate in respect of the property to the second respondent after receiving the full and final payment as per the settlement letter. In that event, respondent No.3 was to have no objection to the same and indeed respondent No.3 can have no objection to the same. The entire amount under the

agreement has been paid. In fact, an amount of Rs.16.50 lacs has been paid in excess. To reiterate, there is no provision for payment of interest. The delay in payment stood condoned. The petitioner has, as on date, paid an amount of Rs.96.50 lacs for the property against the consideration of Rs.80 lacs. It is true that there was a delay. However, it is unfair on the part of respondent No.2 to demand interest from the petitioner at the rate agreed upon between respondent No.2 and respondent No.3.

11. Respondent No.2 has taken its unfairness to a higher level. It insists upon the cancellation of the agreement but, at the same time, refuses to refund the amount of Rs.70.50 lacs paid to it by the petitioner. This is unfair in the extreme. It is difficult to understand on what basis respondent No.2 can possibly justify its action.

12. Even assuming that the impugned orders of the DRT and DRAT were justified when they were passed, there is no warrant for permitting those orders to continue to remain in operation in view of what transpired thereafter, namely, the payment of not only the entire amount under the agreement but an amount of Rs.16.50 lacs in excess thereof. As we mentioned earlier, after this petition was filed an aggregate amount of Rs.45 lacs has been paid which is in excess of the amounts due under the agreement. Even assuming that respondent No.2 is entitled to some amount in equity towards interest, the amounts paid thus far would meet the ends of justice.

13. In this view of the matter, it is not necessary to consider the petitioner's alternate contention that even assuming that the agreement has come to an end his possession as a tenant is liable to be protected and the amounts paid by him thereunder be returned with interest.

14. In the circumstances, the impugned orders are set aside. The petitioner shall be put in possession of the property forthwith. Out of abundant caution, we would only say that respondent No.2 is at liberty to seek payment of any further amount towards interest in accordance with law. Correspondingly, the petitioner is also at liberty to adopt proceedings for recovery of any excess amount paid by him to respondent No.2 and for damages on account of his having been put out of possession of the property.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

12.04.2016 **(ARUN PALLI)**
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