IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

213

Civil Writ Petition No.23125 of 2015
Date of Decision:24.05.2016

M/s Sardar Associates Limited ....petitioner

Versus

Punjab and Sind Bank .....respondent

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

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

Present: Mr.Anand Chhibbar, Senior Advocate with
Mr.Ranjit Chawla, Advocate and
Mr.Gaurav Mankotia, Advocate
for the petitioner

Mr.Pavan Malik, Advocate
for the respondent

***

<u>S.J.VAZIFDAR, ACTING CHIEF JUSTICE (ORAL):</u>

The petitioner seeks a writ of mandamus directing the respondent-Bank to refund an amount of ₹1,03,38,064/- with interest. The petitioner's claim arises as follows:

2. The petitioner had filed a petition for special leave to appeal before the Supreme Court in which the effect of the circulars issued by the Reserve Bank of India (RBI), with respect to One Time Settlements (OTS) was involved. The Supreme Court held that the guidelines issued by the Reserve Bank of India are binding and that that if in terms of the guidelines issued by the RBI, the right is created in a borrower there was no reason why a writ of mandamus

could not be issued. The Supreme Court however admittedly did not compute the amount that the petitioner is entitled to towards refund upon the implementation of the guidelines and formulating an OTS.

3. Thereafter the petitioner filed CWP No.4074 of 2011, which was disposed of by an order and judgement of a Division Bench of this Court dated 17.09.2013. The Division Bench noted and enumerated the agreed position between the parties, inter alia, regarding the petitioner's entitlement to the OTS Scheme, the payments made by the petitioner from time to time and the petitioner's entitlement to interest on the amount to be refunded. The order concludes as follows:

> *"Despite the aforesaid being the agreed position, it is stated that there is a perceived difference in the amount and someone would have to settle the account to come to the agreed figure. It is suggested that the Recovery Officer of the Debt Recovery Tribunal can do this task and we order accordingly.*
>
> *Parties to appear before the Recovery Officer of the Debt Recovery Tribunal-II, Chandigarh on 07.10.2013 for the Recovery Officer to carry out the necessary task.*
>
> *Petition accordingly, stands disposed of.*
>
> *Liberty to move in case of difficulty."*

4. The Recovery Officer accordingly computed the amount due to the petitioner at ₹1,03,38,064/-, the amount that is sought to be recovered by the present petition together with the interest. The petitioner contends that the computation is final and conclusive and that it is accordingly entitled to be paid this amount forthwith.

5. We do not agree that the computation by the Recovery Officer is final. It is subject to challenge. It has in fact been challenged by the respondent in the following manner:-

(A) The respondent-Bank did not accept the computation by the Recovery Officer. It challenged the same in the first instance by filing CM No.5208 of 2015 in CWP No. 4074 of 2011. The CM was disposed of by an order dated 04.05.2015. The Division Bench held that the application was not the correct proceeding. It further held that if the petitioner aggrieved by the order, it may file a separate petition. The application was dismissed on the ground that it was not maintainable.

(B) The respondent accordingly filed CWP No.17485 of 2015, which was disposed of by an order and judgement dated 24.08.2015. The Division Bench dismissed the petition with liberty to the respondent-Bank to file an appeal before the Debts Recovery Tribunal-II, Chandigarh (for short 'the DRT'). The Division Bench held that the order of the Recovery Officer dated 07.01.2015 is appealable under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The Division Bench actually meant the Recovery of Debts due to Banks and Financial Institutions Act, 1993. The respondent contended that the writ petition was maintainable as the Recovery Officer had passed the order on the basis of the guidelines issued by this Court in the earlier orders. The Division Bench however rejected this contention holding that merely because the Recovery Officer had passed the order taking into consideration the guidelines given by this Court, it does not take away the right of the respondent to avail the remedy of an appeal. The Division Bench expressly held that the order of the Recovery Officer is appealable and granted the respondent the liberty to file an appeal.

(C) It is in these circumstances, that the respondent filed an appeal before the DRT. The DRT by an order dated 19.10.2015 stayed the order of the Recovery officer by a reasoned order.

6. There is a serious dispute between the parties as to the terms of the OTS and the amount that is repayable. We are however not concerned with the same in this petition.

The order of the Division Bench dated 24.08.2015 has not been reviewed. It is binding on us. The respondent, in fact, filed the writ petition which was held to be not maintainable. Further, the Division Bench held that the order of the Recovery Officer is appealable. The respondent, therefore, rightly filed an appeal before the DRT. The respondent filed an appeal expressly in accordance with the order of the Division Bench dated 24.08.2015. The respondent, in fact, had no other option.

In this regard, it is important to note that the petitioner had also filed CM No.3671 of 2015 in CWP No.4074 of 2011 seeking enforcement of the order of the Recovery Officer. This application was dismissed by an order of the Division Bench dated 31.03.2015. It is important to note that even there another Division Bench held that the order of the Recovery Officer is binding "till such time it is set aside or modified by any superior authority". The application was therefore disposed of with liberty to the applicant to seek such other remedy as is available in accordance with law, meaning thereby the remedy before the superior authority.

8. In view of the orders passed by this Court, it is not possible for us to entertain this writ petition. The respondent-Bank has followed the remedy as it was expressly directed to.

9. The petition is therefore dismissed.

It must be noted that the parties have been litigating regarding this very matter since the year 2003. The DRT therefore shall dispose of the respondent's appeal expeditiously and according to it priorities on the date on which it was filed in the year 2003. The parties are at liberty to mention the matter to the DRT for according to it priority on that basis.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(ARUN PALLI)
JUDGE

May 24, 2016
neenu