

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.4529 of 2016 (O&M)
DATE OF DECISION: 22.03.2016

M/s Shree Shayam Cotex Pvt. Ltd. and another
.....Petitioners
versus
Union of India and others
.....Respondents

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

Present: Mr. Aalok Jagga, Advocate for the petitioners
Mr. R.S. Bhatia, Advocate for the respondents
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S.J. VAZIFDAR, ACTING CHIEF JUSTICE:

The petitioners seek an order directing respondent No.3-State Bank of Patiala to restore the physical possession of the factory, land and building, alleging that respondent No.3 had taken illegal possession thereof on 11.01.2016. The petitioners have also sought an order to set aside an order dated 24.02.2016 passed by the DRT rejecting their application for restoring the possession of the said premises.

2. The petitioners had made an application under the OTS Scheme made by the third respondent. Respondent No.3 accepted the same on the terms and conditions contained in its letter dated 11.01.2016. By the said letter, respondent No.3 stated that the total amount payable would be 101.27 lacs plus future expenses to be paid by respondent No.3 of which Rs.10 lacs was to be paid upfront. An amount of Rs.30 lacs had to be paid by 18.01.2016 and the balance amount of Rs.61.27 lacs and future expenses were to be paid by 30.03.2016. The letter stated that if the amounts were not paid, the compromise would

stand cancelled and the petitioners would have to pay the entire difference inclusive of applicable interest.

The letter further stated that respondent No.3 would release its charge on the property and other securities on payment of remaining Rs.91.27 lacs plus future expenses to be paid by respondent No.3. Consent terms with default clauses were to be filed before the Presiding Officer of the DRT. All cases filed by the Company/Director/guarantors, if any, against respondent No.3 were to be withdrawn. Respondent No.3 reserved unto itself the right to cancel the settlement if, for any reason, the amounts mentioned in the letter were not received within the period stipulated therein.

3. The petitioners, admittedly, acknowledged the acceptance of the terms and conditions contained in the letter. Other than the future expenses mentioned in the letter dated 11.01.2016, the petitioners have paid the entire amount except an amount of Rs.15.82 lacs. The petitioners, admittedly have up to 31.03.2016 to pay the same. To show their *bona fides* and to secure possession of their properties allegedly illegally taken possession of by respondent No.3, the petitioners have handed over a post-dated cheque of 29.03.2016 with an undertaking that the same would be honoured upon presentation. In the event of the cheque being honoured, the entire amount under the OTS would stand paid except the future amount. The third respondent admits that upon the cheque of Rs.15.82 lacs being realized the entire amount under the OTS save and except the future amount would be paid. The dispute, therefore, relates only to a sum of about Rs.8 lacs which the bank contends is payable towards the future amount.

4. We asked the learned counsel appearing on behalf of respondent No.3 to specify what the future amounts are. He said that the same includes the amounts payable to recovery agents, costs of litigation, etc. The main amount is payable to the recovery agents. The bank claims that it is entitled to recover the same. The petitioners seriously dispute this payment. The petitioners have filed an application under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Act, 2002, which is pending. The respondent has also filed an O.A. before the DRT for the recovery of the amounts under the Recovery of Debts due to Banks and Financial Institutions Act, 1993.

5. Mr. Jagga, the learned counsel appearing on behalf of the petitioners, invites us to decide before 31.03.2016 as to whether the amounts towards the future expenses are payable or not. In our view, this issue ought to be decided, in the first instance, by the DRT in the appropriate proceedings.

6. In the event of the cheque of Rs.15.82 lacs being realised, it would be unfair to deprive the petitioners possession of the property only on the ground that the future amount of about Rs.8 lacs remains to be paid. We intend passing an order which completely protects the third-respondent/bank and the petitioners in all respects.

7. The petition is, therefore, disposed of by the following order:-

- (i) The undertaking on behalf of the petitioners that the cheque would be honoured upon presentation is accepted.

- (ii) The third respondent shall be entitled to realise the cheque of Rs.15.82 lacs and to appropriate the amount without prejudice to its rights and contentions and on account.
- (iii) The third respondent is appointed as the Receiver of this Court of the said property and the petitioners shall occupy the same as agents of the Court Receiver. The third respondent shall hand over the possession of the property to the petitioners by 23.03.2016. It is clarified that the petitioners shall maintain status-quo in respect of the property and shall not dispose of, alienate, encumber, part with possession of or create any third party rights in respect thereof without the leave of the DRT.
- (iv) In the event of the cheque of Rs.15.82 lacs not being honoured, the petitioners shall forthwith handover quiet, vacant and peaceful possession of the property to respondent No.3. Any refusal to do so would invite strictest action for contempt against the petitioners.
- (v) The petitioners agree and undertake to pay the amount(s) towards the future dues as per the letter dated 11.01.2016 in the event of petitioners being held liable to do so in any proceedings together with interest thereon as may be ordered by the DRT. The petitioners agree and undertake to do so. The undertaking is accepted. If the petitioners fail to do so, they shall forthwith hand over quiet, vacant

and peaceful possession of the property to the 3rd respondent who shall proceed in respect thereof in accordance with law to enforce its rights.

(vi) The petitioners' undertaking to comply with all their other obligations under the agreement including the withdrawal of proceedings is accepted. Their failure to do so would result in this entire order being vacated forthwith without further orders of the Court and the petitioners shall hand over quiet, vacant and peaceful possession of the property to the 3rd respondent who shall deal with the same in accordance with law to enforce its rights in respect thereof.

(vii) It is only in view of the statement made and undertakings given on behalf of the petitioners that the petition has been entertained and this order has been passed. If any of them are not complied with, apart from the consequences already stipulated, the OTS shall cease to operate and the 3rd respondent shall be entitled to enforce its entire claim.

Copy dasti under the signatures of the Bench Secretary.

(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE

22.03.2016
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(ARUN PALLI)
JUDGE