

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

COCP No.2084 of 2016 (O&M)

Date of decision: June 07, 2017

State Bank of India (SAMB), Ludhiana

...Petitioner

Versus

Agyapaul Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Rakesh Gupta, Advocate for the petitioner with
Mr. Pardeep Sharma, Asstt. General Manager, SBI.
Mr. Anand Chhibbar, Senior Advocate with
Mr. M.S. Nain, Advocate for the respondent.

Rajan Gupta, J.

Brief factual background of the case is that Managing Director of M/s Apna Punjab Resorts Limited availed of financial facilities from State Bank of India to the extent of 41.00 crores. The project, however, became a non-performing asset. Thus, proceedings under section 13 of the Securitization and Reconstruction of Financial Assets, Enforcement of Securities Interest Act (SARFAESI), 2002 were initiated against him. When the bank was about to take possession of the property, respondent namely, Agyapaul filed CWP No.11389 of 2016 before this court. While issuing notice of motion, a Division Bench of this court directed that they would not be dispossessed for a period of two months. At the time, the order was passed, a cheque for Rs.7.50 crores dated 25.6.2016 was presented before the court. The order passed by the court reads as under:-

“The petition is allowed to be withdrawn with liberty to avail the alternate remedy under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short SARFAESI Act).

2. The only concession that we are inclined to grant to the petitioners is an opportunity to make an application for interim reliefs before the Debts Recovery Tribunal. For this purpose alone we direct the bank not to encash the cheque dated 25.06.2016 till 25.07.2016 and further direct that the District Magistrate, Ludhiana shall adjourn the hearing of the application under Section 14 of the SARFAESI Act till 31.07.2016. This is in view of the express undertaking given to the Court that the cheque will be honoured upon presentation on or after 25.07.2016.”

The cheque dated 25.06.2016 was presented for encashment by the bank on 25.07.2016. However, same was dishonoured because of insufficient funds in the account. The bank, thus, filed instant contempt petition alleging violation of the undertaking furnished by the respondent before the Division Bench. Upon issuance of notice, respondent's counsel appeared and sought for filing reply. Reply by way of affidavit of Agyapaul respondent was filed on 19.12.2016. He took up the plea that undertaking before the court was given with the intention that bank would consider OTS proposal in view of the payment. Besides, bonafides of the respondent are clear from the fact that he deposited another Rs.4.00 crores with the bank after cheque in question was dishonoured. He also kept in pursuing his negotiation for consideration of OTS proposal for Rs.31.00 crores. However, in the affidavit, no explanation was furnished why an undertaking was given before the Division Bench that the cheque for Rs.7.50 crores dated 25.06.2016 would be encashed if presented on or before 25.07.2017.

Admittedly, said cheque bounced on presentation. The case came up for hearing on December 23, 2016. Counsel for the respondent raised a plea that disobedience was not deliberate/willful. He sought to file another affidavit on behalf of the respondent. This prayer was considered and an order was passed. Relevant part thereof reads as under:-

“Mr. Chhibbar, who has put in appearance for the respondent, does not controvert the fact that the cheque was in fact, dishonoured. Only plea raised by him is that disobedience is not deliberate/willful. He submits that he may be allowed to file an affidavit of the respondent stating therein the circumstances, in which the undertaking could not be complied with. This court is not inclined to accept the prayer as this court finds prima facie that contempt of court has been committed. Purely in the interest of justice, however, one opportunity is granted. Respondent is bound down for the next date of hearing. Needless to observe that in case of his non-appearance, this court would issue coercive process to secure his presence.”

Respondent, however, preferred a Special Leave Petition before the Hon'ble Supreme Court, wherein he stated that no opportunity of hearing was granted to him. This is despite the fact that affidavit dated 19.12.2016 had already been filed by the respondent and another opportunity of hearing was granted to him. Order of the Supreme Court dated 23.01.2017 was placed on record by CM No.3294-CII-2017 on March 06, 2017. Operative part of the order passed by the Hon'ble Supreme Court reads as under:-

“5, Whether there is a wilful or deliberate disobedience of the order passed by the Court is something to be seen from the reply filed

by the appellant to the show cause notice. Even before issuing show cause, we find that the High Court has entered a satisfaction that “..... *this court is not inclined to accept the prayer (to file reply) as this court finds prima facie that contempt of court has been committed.*”

6. In that view of the matter, we set aside the impugned order passed by the High Court. The High Court shall grant an opportunity to the appellant to file his reply and on the reply being filed, the appellant may be heard and only thereafter, the High Court may form an opinion as to whether the court should proceed against the appellant for Contempt of Court.

7. In the light of what we have stated above, we request the High Court not to insist upon the personal presence of the appellant till the Court passes appropriate orders in the light of the reply furnished by the appellant.”

Mr. Chhibbar, learned senior counsel appearing for the respondent submitted that he may be granted another opportunity for filing another affidavit. This court, thus, granted two weeks time. Additional affidavit dated 8.3.2017 was filed in the registry on 16.3.2017. Even thereafter, the matter was adjourned on four/five dates on request of counsel for respondent as he needed more time to address the court. On May 26, 2017, learned counsel submitted that he was ready to take certain steps to purge the contempt. This court, thus, directed that the matter be listed for hearing on 31.05.2017 and Assistant General Manager of State Bank of India may remain present in court on the said date. This court also perused additional affidavit filed by the respondent. However, only vague and irrelevant pleas were raised therein. It was, however, admitted in para 2 thereof that OTS proposal had already been rejected by the bank being on the lower side. It was reiterated that the undertaking was given before the

writ court in view of the pending OTS proposal with the bank. Para 4 of the affidavit dated March 08, 2016 reads as under:-

“4. That the order dated 01.06.2016 passed by this Hon'ble High Court while disposing of the Civil Writ Petition No.11389 of 2016 the undertaking was given in view of the pending OTS Proposal dated 15.06.2016 but the same was rejected on 11.07.2016 well before the 25th July, 2016 when the cheque in question was presented for encashment. Copy of the rejection letter dated 11.7.2016 is annexed as Annexure A-6.”

It is evident that aforesaid averment made in the affidavit that cheque was given in the court in view of the pending OTS proposal, is contumacious in nature. Such a plea is not reflected in the order passed by the writ court. It was merely stated before the bench that cheque dated 25.06.2016 would be encashed if presented on or before 25.07.2017. The court, thus, observed that only concession that could be granted to the respondent, was an opportunity to make an application for interim relief before the Debt Recovery Tribunal. For this purpose it directed the bank not to encash the cheque for Rs.7.50 crores till 25.07.2016. The court also directed the District Magistrate, Ludhiana to adjourn the hearing of application under Section 14 of SARFAESI till 31.07.2016. Thereafter, the bank presented the cheque on 25.07.2016, but it was dishonoured due to insufficient funds in account of the respondent. The contempt petition remained pending before this court almost an year, during which ample opportunity of hearing was granted to the respondent as also to purge the contempt. However, he only demonstrated evasiveness. In the end his counsel also referred to apology contained in the affidavit. This court gave

several opportunities to the respondent to enable him to purge the contempt. It even summoned the Assistant General Manager of State Bank of India, as respondent submitted that he was ready to remit Rs.3.5 crores to the bank in installments. He, however, insisted that the same be adjusted towards one time settlement. This proposal was unacceptable to the bank as settlement proposal had already been rejected. The factum of rejection of proposal is admitted by the respondent in his affidavit dated 08.03.2017. Only question that remains to be considered is, whether respondent has violated the undertaking given before the Division Bench while disposing of the petition. The conclusion is inescapable. It is clear that respondent furnished an unconditional undertaking before the court that cheque dated 25.06.2016 would be honoured on presentation. In view of same, certain reliefs were granted to him. However, the cheque was dishonoured. It is evident that respondent is a Managing Director of the firm M/s Apna Punjab Resorts Limited, which took loan from the bank. It is also evident that at the time of furnishing undertaking before the Division Bench, he was fully conscious of his liability. Despite this, the cheques issued by him were dishonoured. The conduct of the respondent shows that there is no redeeming feature which can absolve him of his liability under the Act. Accordingly, he is hereby convicted for committing offence under section 12 of the Contempt of Courts Act.

As regards the question of sentence, merely apology has been tendered in the affidavit filed by the respondent. This court granted opportunities to the respondent to purge the contempt, but he failed to do so.

He struck to his stand that respondent bank should honour the OTS proposal. However, it is clear that said proposal had already been rejected by the bank on 29.3.2016 (Annexure A-4). Besides, the order passed by the writ court does not show that any reference was made in the same to the OTS proposal. Stand of the respondent is, thus, contumacious in nature. He deserves no leniency. Under the circumstances, he is sentenced to simple imprisonment for a period of six months. Operation of this order is, however, stayed for one month to enable the respondent to avail remedy of appeal, if any. In case no appeal is filed within the said period, the order shall be executed forthwith by Chief Judicial Magistrate, Ludhiana. Respondent shall be taken into custody to serve the sentence as ordered by this court. Allowed in these terms.

(RAJAN GUPTA)
JUDGE

June 07, 2017
'Rajpal'

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No