IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP 10586 of 2017

Date of Decision: May 17, 2017

IndusInd Bank Ltd. and ors.

…..Petitioners

Vs.

Kuldeep Singh and anr.

…..Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr. A.S. Virk, Advocate for the petitioners.

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M.M.S. BEDI, J.

The IndusInd Bank Limited has challenged the award dated February 15, 2017 passed by Permanent Lok Adalat, (PUS), SBS Nagar, directing the petitioner to pay compensation of Rs.1,00,000/- to respondent No.1 within a period of 45 days failing which to pay interest @ 8% per annum from the date of institution till payment.

Brief facts relevant for the decision of the present case are that the petitioner Bank had advanced a loan of Rs.9,52,500/- to respondent No.1. The said amount was to be paid by respondent No.1 with interest of Rs.2,74,320/- in 48 instalments of Rs.26000/- p.m. w.e.f. February 27, 2013 till January 21, 2017. Respondent No.1 had purchased Tata LP Truck (PB 32 P 0462) with financial assistance granted in his favour. Respondent No.1

claimed that he had been regularly paying the instalments of the loan, however, due to unavoidable circumstances, he could not pay few of the instalments and that the petitioner Bank had threatened to seize the vehicle. The petitioner bank had asked for sum of Rs.712381/- as outstanding from respondent No.1. Respondent No.1 had stated that the petitioner had over-charged interest @ 36% p.a. illegally and that the loan was payable by January 21, 2017 and respondent had already paid a sum of Rs. 5,11,100/- to the petitioner Bank. The petitioners seized the vehicle of respondent No.1 on April 4, 2015.

Respondent No.1 also prayed for the compensation for the mental, personal and physical harassment. The petitioner Bank had also issued notice through advocate demanding the amount due w.e.f. August 18, 2015.

The petitioner Bank challenged the maintainability of the petition before the Permanent Lok Adalat. The Permanent Lok Adalat vide order dated December 12, 2015 had released the vehicle in favour of respondent No.1 subject to the condition that he would pay sum of Rs.1.50 lacs on or before January 30, 2016. Respondent No.1 paid sum of Rs.70000/-. On application of the petitioner Bank and the vehicle was ordered to be impounded and sold by the Court vide order dated February 23, 2016. The petitioner Bank disposed of the vehicle for recovery of the balance amount. Another application was filed by respondent No.1 alleging over-charging of interest. Respondent No.1 offered for release of the vehicle on payment of the balance amount. He also prayed for compensation and restoration of his vehicle. The petitioner Bank resisted the application of respondent No.1 admitting the factual aspects but pleaded that respondent No.1 had paid only a sum of Rs.70000/- against an undertaking of payment of Rs.1.50 lacs as such the petitioner Bank had sold the vehicle for realization of its balance amount and that respondent No.1 was not entitled to restoration of the vehicle or any compensation. The operative part of the judgment passed by Permanent Lok Adalat is reproduced hereunder:-

> *"12……The applicant has been granted loan of Rs.952500/-on 21.2.2013. He was to pay the amount of loan and interest in 48 equated monthly installments of Rs.26000/- p.m. upto 31.1.2017. We find that the demand raised by the respondents as per notices on record included interest upto 31.1.2017. When the account was sought to be closed in 2015/2016, the respondent could not have sought/ demanded interest upto 31.1.2017. The applicant had stated that in case the respondent had asked for correct amount before the seizure and sale of the vehicle he would have paid the same. The submission of the learned counsel for the applicant may not be rejected out of hand in view of peculiar facts and circumstances of the case.*
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> *13. The respondent had applied penal/ agreed rate of interest against the applicant during the period the vehicle had been under its possession w.e.f. 4.4.2015 to 10.12.2015. When the applicant had been deprived of the vehicle for more than six months, he is definitely entitled to rebate in interest. He is also entitled to extension of the period for payment of amount of loan and interest.*
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> *14. Though the vehicle had been ordered to be disposed of by this Court vide order dated 23.2.2016, yet the respondent was required to give final notice with*

exact amount of loan and interest payable by the applicant up to date of sale. The applicant had not been informed of the proposed sale of his vehicle for non-payment of the amount due so calculated as per law as observed above. In the reply it had no where been stated when, where and for what amount, the vehicle had been sold. It had also not been stated that the competent authority / authorized evaluator had assessed the cost of the vehicle before the same had been auctioned. These facts undoubtedly render the alleged act of sale of the vehicle suspect.

15. The respondent had tendered in evidence statement of account Ex.Rx of the applicant. This document indicates a sum of Rs.171561/- outstanding against the applicant upto 15.12.2006. Statement of account Ex.Rx is bound to be rejected out rightly. In reply filed by the respondent on 3.5.2016, as noticed above, it had no where been stated that after disposal of the vehicle some amount had been left outstanding. It had been stated in the reply that the vehicle had been disposed of for recovery of the balance amount of the loan and interest. Hence the respondent cannot be allowed to say that some amount is yet to be recovered from the respondent for any item. Also how the balance amount of Rs.171561/- had been worked out is not clear from the statement Ex.Rx. Re-possession charges of Rs.40,000/- of the vehicle had been claimed without any basis. It is more than clear that the respondent in order to ruin the applicant had been claiming exaggerated amount under different heads and is liable to be treated a wrong doer. It is in these circumstances that even affidavit in support of the defense had not been filed.

> *16. Question arises of determination of compensation payable to the applicant. The applicant had been deprived of his livelihood. Sale of the vehicle may be collusive and that was why details thereof with affidavit had not been produced. After taking into consideration the facts and circumstances of the case, the applicant is awarded compensation of Rs.1,00,000/- against the respondent for mental, physical and financial harassment. The respondent is directed to pay the compensation of Rs.1,00,000/- to the applicant within 45 days from today failing which it shall pay interest at the rate of 8% p.a. from the date of institution till payment. The application is accordingly allowed.*"

A perusal of the above said observations of the Permanent Lok Adalat indicates that respondent No.1 has been deprived of the Truck which had been purchased by him by obtaining loan from the petitioner Bank despite the fact that he had paid all the instalments except for alleged balance of Rs.1,71,561/- which had been wrongly worked out. The exaggerated amounts of possession charges have been claimed by the petitioner Bank in order to ruin respondent No.1 under different heads. The Truck having been wrongly re-possessed and further alienated causing a serious prejudice to respondent No.1. The compensation of Rs.1 lac has been ordered to be paid to respondent No.1.

There does not appear to be any illegality in passing the order that the said amount be paid within 45 days failing which the petitioners will be liable to pay interest @ 8% p.a. from the date of institution till payment.

The present writ petition appears to be a defensive device to pressurize respondent No.1 not to claim the excess damages and refund of the amount, which has already been paid by him towards the liability of loan under monthly instalments of Rs.26000/- p.m. upto January 21, 2017. As without assessing the value of the Truck, the same has been dispossessed and disposed of, no ground is made out to interfere in the order passed by the Permanent Lok Adalat dated February 15, 2017.

The petition is dismissed. Dismissal of this petition will not prejudice the rights of respondent No.1 to claim any relief on account of the illegalities committed by petitioner Bank, in accordance with law.

May 17, 2017 (M.M.S.BEDI)
sanjay JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.