

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 12722 of 2017
Date of decision: 01.06.2017**

Krishan and another

.....Petitioners

Vs.

State Bank of Patiala and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Munish Kumar Garg, Advocate for the petitioners.

Ajay Kumar Mittal,J.

1. The petitioners through the present petition under Article 226 of the Constitution of India pray for quashing the order dated 8.11.2016, Annexure P.8 passed by respondent No.2 – prescribed authority-cum-Sub Divisional Officer (Civil) by which restoration of the application dated 12.4.2011, Annexure P.1 has been allowed. Further prayer has been made for quashing the order dated 4.1.2017, Annexure P.10 passed by respondent No.3 – Commissioner Hissar Division in the appeal filed by the petitioners against the order dated 8.11.2016.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioners obtained agricultural loan from respondent No.1-State Bank of Patiala and pursuant thereto, due to default in repayment of the loan amount, respondent No.1

preferred application dated 12.4.2011 under Section 8(1) of the Haryana Agricultural Credit Operations and Miscellaneous Provisions (Banks) Act, 1973 (in short, “the Act”) for the recovery of total due amount of ₹ 7,59,044.62. On 21.10.2011, respondent No.2 consigned the said application for non prosecution and observed that if the Bank desires, it can move the application for its restoration. Order for consigning the case to the record room was also made. After about two years, respondent No.1 preferred fresh application before respondent No.2 on 24.6.2013 for the recovery for total amount of ₹ 10,07,110.94. The petitioners put in appearance and filed written statement inter alia taking the plea regarding maintainability of the second application dated 24.6.2013 and concealment of the true and material facts regarding the dismissal of their first application dated 12.4.2011. Respondent No.2 vide order dated 20.5.2014, Annexure P.5 dismissed the second application dated 24.6.2013/28.6.2013 and direction was issued to respondent No.1 Bank that the order dated 21.10.2011 be complied with. Thereafter, respondent No.1 preferred application for restoration of its first application dated 21.10.2011 on 22.9.2014/4.2.2015. The petitioners filed their reply by taking the specific plea that the application for restoration filed by respondent No.1 was barred by limitation. Vide order dated 8.11.2016, Annexure P.8, respondent No.2 allowed the application for restoration filed by respondent No.1 Bank holding that recovery of the amount was the statutory right of the Bank which could not be questioned at all and ordered for restoration of the first application dated 12.4.2011/18.4.2011. Aggrieved by the order, the petitioners filed an appeal against the order dated 8.11.2016 before respondent No.3. Vide order dated 4.1.2017, Annexure P.10, respondent No.3 dismissed the appeal filed by the petitioners being not maintainable for want of jurisdiction. It was held that there was no provision

of appeal or revision under the Act by challenging the order passed by respondent No.2 under Section 8(1) of the Act. Hence the instant petition by the petitioners.

3. We have heard learned counsel for the petitioners.

4. Admittedly, the petitioners took agricultural loan from the respondent-Bank. On account of default in repayment of loan, the Bank filed application under Section 8(1) of the Act for the recovery of ₹ 7,59,044.62 before respondent No.2, which was consigned to records vide order dated 21.10.2011 by respondent No.2 for want of prosecution and liberty was given to the Bank to file application for restoration. On 24.6.2013/28.6.2013, the Bank filed another application under Section 8(1) of the Act for recovery of ₹ 10,07,110.94 before respondent No.2. The petitioners filed their reply taking the plea regarding concealment of earlier application. Vide order dated 20.5.2014, respondent No.2 dismissed the second application filed by the Bank. However, liberty was given to the Bank to move the application for restoration as per order dated 21.10.2011. On 22.9.2014/4.9.2015, the Bank filed application for restoration before respondent No.2. The petitioners in reply took the plea that the application for restoration was barred by limitation. After examining the record, it has been categorically recorded by respondent No.2 vide order dated 8.11.2016 that in the order dated 20.5.2014, it was clearly directed that the Bank may get the case restored by filing an application. Thus, it was held that principle of res judicata was not applicable nor legal right of the Bank to file application to recover the case file could be questioned. The petitioners filed an appeal before respondent No.3 which was dismissed for want of jurisdiction holding that there was no provision of appeal or revision against the order passed under Section 8(1) of the Act. The fact remains that amount of loan is

due against the petitioners. Further, when the order dated 21.10.2011 was passed by respondent No.2 consigning its application for want of prosecution, the said order was conditional in as much as liberty was given to the Bank for filing application for restoration of the application. Thus, the respondent No.2 rightly allowed the application for restoration vide order dated 8.11.2016 holding that recovery of the amount of loan from the petitioners was the statutory right of the Bank. No error or perversity could be found in the approach of the authorities below in restoring the application of the Bank. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

June 01, 2017
'gs'

(Harinder Singh Sidhu)
Judge

Whether reportable

Yes

Whether speaking/reasoned order

Yes