IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5266 of 2017
Date of decision: 15.03.2017

M/s Sachdeva Fashion House

....Petitioner

Versus

Punjab and Sind Bank and another

....Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Peeush Gagneja, Advocate, for the petitioner.

RAMENDRA JAIN, J.

1. Shorn of unnecessary details, the facts relevant for disposal of the present writ petition are that in the year 2005 petitioner obtained term loan facility of ₹ 3 lakh and in the year 2007, he obtained overdraft facility to the tune of ₹ 3 lakh from the respondent-bank. As the petitioner failed to adhere to the financial discipline of the bank, respondent-bank issued notice dated 31.08.2013 to the petitioner under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement Security Interest Act, 2002 (in short 'the SARFAESI Act') followed by possession notice dated 26.11.2014. The petitioner challenged the aforesaid action of the respondent-bank by filing SA No.132 of 2015 before the DRT-II, Chandigarh. Simultaneously, respondent-bank also filed O.A. No.20820 of 2015 against the petitioner for recovery of the loan amount. During the pendency of the proceedings before the DRT-II, Chandigarh, the District Magistrate, Fazilka passed the orders dated 22.08.2016 in favour of the bank for taking the possession of the mortgaged property from the petitioner-firm. Thereafter petitioner filed IA No.1447 of 2016 in SA

No.132 of 2015 for settlement of the matter with the respondent-bank. The said IA and SA were disposed of by DRT-II vide order dated 06.09.2016 (Annexure P-4) directing the petitioner to make payment of ₹ 11,99,887/- along with simple interest @ 10% per annum and cost of ₹ 20,000/-. According to aforesaid order, repayment was to be made as per following schedule: -

Instalment	Amount	Due date
1st	₹ 1 lakh	20.09.2016
2nd	₹ 2 lakh	15.10.2016
3rd	₹ 4 lakh	15.12.2016
4th	Balance amount along with interest	15.03.2017

The petitioner, in compliance of order dated 06.09.2016 (Annexure P-4) made payment of first instalment of ₹ 1 lakh and second instalment of ₹ 2 lakh along with cost of ₹ 10,000/- before the due date but could not pay the third instalment of ₹ 4 lakh on or before 15.12.2016. Hence, petitioner moved MA No.173 of 2016 before the DRT-II for extension of time for making payment of third and fourth instalments by two months each. Consequently, the DRT-II, Chandigarh extended the date of payment of third instalment from 15.12.2016 to 15.01.2017 vide order dated 14.12.2016 (Annexure P-7). Accordingly, the petitioner deposited the third instalment of ₹ 4 lakh on 13.01.2017. However, the request of the petitioner for extension of time in making the payment of fourth instalment was declined by DRT-I, Chandigarh vide order dated 06.03.2017 (Annexure P-10) with liberty to the petitioner to approach the authorised officer at Abohar. Thereafter, the petitioner approached the authorised officer of the respondent-bank and gave him a detailed representation dated 07.03.2017

(Annexure P-11) for extension of time in making the payment of fourth instalment, which was rejected by the authorised officer vide order dated 09.03.2017 (Annexure P-1).

2. Hence by way of instant writ petition filed under Article 226 of the Constitution of India, the petitioner has prayed *inter alia* for issuance of a writ in the nature of *certiorari* for setting aside the order/letter dated 09.03.2017 (Annexure P-1) rejecting the request of the petitioner for extension of time in depositing the fourth instalment.

3. Learned counsel for the petitioner submitted that the impugned order 09.03.2017 (Annexure P-1) is illegal and arbitrary being against the principles of natural justice, equity and good conscience in view of the bona fide intention of the petitioner to make payment of the settled amount as the petitioner has already paid three instalments. The petitioner could not arrange the fourth instalment due to demonetization as the cash flow in the hands of the people had almost wiped out. For this reason it had become difficult for the petitioner to arrange money to pay the fourth instalment. The request for extension of time for making the payment of fourth instalment was wrongly refused without assigning any reason by DRT as well as by the authorised officer of the respondent-bank. The petitioner would suffer an irreparable loss in case the time is not extended to deposit the fourth instalment.

4. After going through the record and giving our thoughtful consideration to the submissions made by learned counsel for the petitioner, we find that the writ petition is completely devoid of any merit.

5. Undisputedly, as per settlement between the petitioner and the respondent-bank, petitioner deposited the first two instalments in time.

Petitioner sought extension of time for making payment of third and fourth instalments. The time to deposit the third instalment was extended and admittedly the last/fourth instalment had to be paid by 15.03.2017. The plea of the petitioner that it could not arrange money due to demonetization is completely frivolous as the petitioner has not been able to prove as to how and in what circumstances the demonetization has affected the petitioner in arranging the fourth instalment. The petitioner is not entitled to any relief from this Court under Article 226 of the Constitution of India as initially the petitioner defaulted in adhering to the financial discipline of the respondent-bank which compelled the bank to approach the DRT to recover the amount of term loan. Thereafter, the petitioner did not comply with the direction given by the DRT vide order dated 06.09.2016 (Annexure P-4) inasmuch as he did not pay third instalment as per schedule but cleared only when extension of time was granted.

6. In view of above, justice, equity and fairplay also do not tilt in favour of the petitioner and thus, the petition being devoid of any merit is dismissed.

7. Registry is directed to bring this order to the notice of the respondents.

(RAMENDRA JAIN)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

March 15, 2017
R.S.

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No