

CWP-COM No.120 of 2017

[1]

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

**CWP-COM No.120 of 2017
Date of decision:05.05.2017**

M/s. Bhag Chand Tek Chand

...Petitioner

Versus

Punjab Financial Corporation and another

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Raj Kumar Gupta, Advocate,
for the petitioner.

Rakesh Kumar Jain, J. (Oral)

The petitioner has prayed for a writ in the nature of *mandamus*, seeking a direction to the respondents for refund of the amount, purported to have been deposited under orders passed by this Court on 15.03.1989 in FAO No.789 of 1983.

In brief, respondent no.2 obtained financial assistance from respondent no.1. Since respondent no.2 was a defaulter, therefore, proceedings under Section 31 of the State Financial Corporation Act, 1951 (hereinafter referred to as the "Act") were initiated by respondent no.1 against respondent no.2. The application filed under Section 31 of the Act was decided in favour of respondent no.1 on 12.08.1983 wherein it was ordered that respondent no.1 would be entitled to recover the remaining amount due on the principal amount of loan advanced after deducting the amount of ₹2 lac paid back by the respondents on 09.08.1980 with interest @ 12-½ per cent as stipulated in the mortgage deed. It is submitted by the petitioner that before the said order

could have been executed by respondent no.1, the petitioner entered into an agreement to sell with respondent no.2 on 01.10.1983 to take over the business of respondent no.2. Respondent no.1 was not satisfied with the order dated 12.08.1983, therefore, they filed FAO No.789 of 1983 as it was claiming interest @ 15-½%, which was otherwise granted @ 12-½% by the Court. The petitioner filed an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "CPC") to be impleaded as a party on the ground that it had purchased the rights of respondent no.2. The said application was dismissed on the ground that the agreement to sell does not confer any title. Thereafter, the order dated 15.03.1989 came to be passed by this Court, giving liberty to the petitioner that in case the appeal filed by respondent no.1 fails, then the amount deposited by it can be recovered. The said order is reproduced as under:-

“The learned counsel for the petitioner states that they are ready and willing to deposit the entire disputed amount due to the Punjab Financial Corporation as there is dispute only with regard to interest. It is further prayed that in case the amount is deposited and the account of the Punjab Financial Corporation is cleared, the Corporation should be directed to issue a 'No Objection Certificate' so that demised premises could be sold and the sale deed may be executed. The counsel also submits that in case the appeal of the Corporation fails, the money if deposited by them should be refunded to them on the same terms and conditions on the basis of which the Corporation appellant had charged from them. There cannot be any dispute with respect to the prayers made by the applicant. In view of this, I order accordingly. However, it is made clear that if 'No Objection Certificate' is issued by the Punjab Financial Corporation, the property shall stand released unless attached under any other decree.”

In view of the aforesaid order dated 15.03.1989, the petitioner deposited the entire disputed amount along with margin of 3% (15-½ – 12-½) interest, as a result thereof, respondent no.1 issued 'No Objection Certificate' on the basis of which conveyance deed was executed in favour of the petitioner. It is further submitted that the appeal bearing FAO No.789 of 1983 filed by respondent no.1 was withdrawn on 07.02.2011. Thereafter, the petitioner filed Review Application against the order by which the appeal was withdrawn but the said application was dismissed by this Court.

The petitioner has, thus, served a notice upon respondent no.1 for recovery of the said amount along with interest, as directed by this Court vide order dated 15.03.1989.

After hearing learned counsel for the petitioner and examining the available record, I am of the considered opinion that the issue involved in this case is precisely of civil nature which can only be decided by the Civil Court after recording evidence, oral as well as documentary, of both the parties.

With these observations, the present petition is hereby dismissed being not maintainable. However, the petitioner is relegated to its remedy of Civil Suit, if so advised.

May 05, 2016
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(Rakesh Kumar Jain)
Judge

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