IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-14579-2018

Date of Decision: 14.11.2018

Ved Parkash and others

...Petitioners

Versus

The Deputy General Manager, State Bank of India and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

PRESENT: Mr. Jagtar Kureel, Advocate for the petitioners.

Mr. Pradeep Sharma, Advocate for
Mr. Gaurav Goel, Advocate for the respondents.

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AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioners have prayed for issuance of a writ of certiorari for quashing the order dated 23.4.2018 (Annexure P-11) passed by respondent No.4 refusing to continue with the settlement scheme, namely, 'Rinn Samadhan Scheme' dated 14.6.2017 (Annexure P-1) as the petitioners have already deposited a major portion of the settled amount. Further, a writ of mandamus has been sought directing the respondents to abide by the settlement (Annexure P-2) between the petitioners and the respondents under the 'RINN Samadhan Scheme'.

2. A few facts necessary for adjudication of the instant petition as narrated therein may be noticed. The petitioners along with one Shri

Naseeb Chand formed a partnership firm, namely, Jindal Steel Corporation. Said Shri Naseeb Chand expired on 3.11.2003 and the petitioners remained as partners of the said firm. The petitioners obtained a cash credit limit of ₹ 5 lakhs to run their business which was granted by the respondents and loan account No. 30300467981 was opened in the name of Jindal Steel Corporation with respondent No.4. Due to sad demise of Shri Naseeb Chand, the petitioners had shut down their business and their account was declared as Non Performing Account (NPA) by the respondents. The respondents had framed a 'One Time Settlement Scheme' under the name of 'RINN Samadhan' (in short "the OTS Scheme") dated 14.6.2017 (Annexure P-1) of NPA and AUCA 2017-18 for settlement of loan in the cases where the accounts have been declared as NPAs. In response thereto, the petitioners requested the respondents to settle their loan account which was settled vide settlement (Annexure P-2) under the OTS Scheme for their account No.30300467981. It was settled whereby the petitioners were to deposit ₹ 4,07,840/-, i.e., 10% of the said amount on the same very day of settlement, remaining 20% amount on or before 25.11.2017 and the balance 70% was required to be deposited on or before 25.3.2018, in the bank. It is thereupon, the respondents were to issue 'No Due Certificate' in their favour and all pending litigation/disputes/cases were to be withdrawn by the respondents. In pursuance thereto, the petitioners deposited 10% of the settled amount as is clear from the settlement, Annexure P-2, and another amount of ₹ 82,000/-, i.e., 20% of the total amount was deposited by them vide deposit slip dated 23.11.2017 (Annexure P-3). The remaining 70% amount was deposited through RTGS/NEFT as is clear from the receipts (Annexures P-4 and P-5, respectively). However, the respondents instead of accepting the said amount, refunded back the same in the account of the petitioners. The petitioners again deposited the said amount through RTGS/NEFT vide receipts dated 15.3.2018 (Annexures P-6 and P-7, respectively). However, the respondents have again returned back the said amount in the account of the petitioners. Thereafter, the petitioners moved the representations dated 12.3.2018 and 16.3.2018 (Annexures P-8 and P-9, respectively) to the respondents for acceptance of the remaining 70% amount and for issuance of 'No Dues Certificate' in their favour, but to no effect. Accordingly, the petitioners filed CWP-8692-2018 and this Court vide order dated 6.4.2018 (Annexure P-10). Thereafter, the petitioners again transferred the remaining amount by way of RTGS/NEFT on 23.4.2018, but the respondents returned back the said amount in their account. Respondent No.4 vide letter/order dated 23.4.2018 (Annexure P-11) called the petitioners to re-settle the matter as the bank did not want to continue with the settlement. Hence, the present petition.

3. We have heard learned counsel for the parties.

4. Learned counsel for the petitioners submitted that the petitioners had deposited the entire amount under the OTS scheme within time bound frame without any fault.

5. It was urged by learned counsel for the respondents that respondent No.4 while discontinuing the OTS Scheme of the petitioners had recorded that once it was found that the offer could not be extended due to some technical reasons, i.e. where physical possession of the mortgaged property had been taken by the bank under the SARFAESI Act and value of security was covering minimum 50% of the dues as on 31.5.2017, the cases of the petitioners was not covered under the said Scheme. Accordingly,

respondent No.4 had withdrawn the said settlement from the petitioners.

6. It would be advantageous to refer to the relevant condition of the OTS for taking the benefit under the aforesaid Scheme, which reads as under:-

> ".... However, Loan Accounts where physical possession has been taken over by the bank under SARFAESI Act and the value of security is covering minimum 50% of our dues as on 31.5.2017 will not be eligible under the OTS."

7. A plain reading of the above quoted condition spells out that where the bank has taken over the physical possession of the secured asset under the SARFAESI Act, and the value of the security was covering minimum 50% of the dues as on 31.5.2017, the borrower was not entitled to the benefit of the said Scheme. In other words, in such a situation the borrower was ineligible under the said OTS Scheme.

8. It was not disputed by the learned counsel for the petitioners that the said condition was not fulfilled in letter and spirit. However, it was urged that once the benefit of OTS Scheme was given, the said condition would lose its significance and the benefit could not be withdrawn. We do not find any merit in the said submission as the eligibility condition was not fulfilled by the borrower and, therefore, any error or mistake committed by the bank would not entitle the petitioner to take benefit under the Scheme. The offer of the petitioners and acceptance by the bank would be *non est.* The relevant findings recorded by the bank while withdrawing the benefit of the OTS Scheme read thus:-

> "But later on it was found that the offer could not be

extended to you, as due to some technical reasons (as per the scheme the loan accounts, where physical possession of the mortgaged property has been taken by bank under SARFAESI Act and value of security was covering minimum 50% of the dues as on 31.05.2017, were not covered), your case was not covered in the said Scheme. Hence the same was withdrawn with immediate effect under intimation to you."

9. In view of the above, the petitioner being ineligible under the OTS Scheme, the said settlement was rightly withdrawn by the respondents. No illegality or perversity could be pointed out by the learned counsel for the petitioners in the view taken by respondent No.4 which may warrant interference by this Court. Accordingly, finding no merit in the writ petition, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

November 14, 2018
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned **Yes**

Whether Reportable **Yes**