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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.15620 of 2018
Decided on 27.09.2018

Ganpat Singh Yadav & another

Petitioners

Versus

State of Haryana and others

Respondents

* * *

CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Jitender Dhanda, Advocate
for the petitioners.

Mr. Padamkant Dwivedi, Advocate
for the respondents No.2 to 4.

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AVNEESH JHINGAN, J.

The present writ petition has been filed seeking quashing of demand raised by Haryana Financial Corporation (for brevity 'HFC') vide order dated 02.02.2018 (Annexure P4) and auction notice dated 17/21-05-2018 (Annexure P6).

2. Petitioner No.1 is the borrower of the loan from HFC and petitioner No.2 is son of petitioner No.1. State of Haryana; HFC, Chandigarh; Managing Director, HFC Chandigarh; Branch Manager, HFC, Gurgaon and Sub Divisional Collector, Kosli, District Rewari have been arrayed as respondents No.1 to 5 respectively, in this writ petition.

3. Petitioner No.1 was running a small scale industry in the name and style of M/s Flex Polymers at Rewari. Financial assistance

by way of two term loans of ₹2.21 lakhs and ₹5.80 lakhs were availed by petitoner No.1 in the year 1992 and 1995 respectively.

4. Due to losses, the unit was closed due to which the petitioners were unable to maintain the financial discipline and defaulted in repayment of the loans. The petitioner No.1 was informed by HFC, vide letter dated 16.08.2012, that there are outstanding dues of ₹2,81,865/-. The petitioners issued a cheque bearing No. 142279 to HFC, to encash the same subject to issuance of No Objection Certificate. On presentation, the cheque bounced for which proceedings are pending under Section 138 of Negotiable Instruments Act, 1881. HFC issued letter dated 02.02.2018 asking the petitioner to pay ₹3,90,931/- upto 31.01.2018. In the meantime, respondent No.5 issued a Recovery Certificate and fixed the date of auction of the land owned by petitioner No.1 as 21.06.2018. Aggrieved of the recovery proceedings, the present writ petition has been filed.

5. Notice of motion was issue vide order dated 20.06.2018. During the pendency of the writ petition, the counsel for respondents No.2 to 4 stated that petitioners are liable to pay ₹2,32,570/- as on 01.09.2018. He was directed to file the statement of account showing the amount due by excluding penal interest.

6. The calculation of the amount due charging interest @13%, without charging penal interest, has been produced in the Court today.

7. Heard learned counsel for the parties.

8. As per the calculation produced in the Court today, there is an outstanding amount of ₹1,77,186/- as on 27.09.2018. The said

amount has been arrived at after giving credit of ₹2 lakhs deposited by the petitioners on 25.07.2018. In the calculation chart, there are tentative legal expenses of ₹30,000/-.

9. Learned counsel for the petitioners submitted that petitioners would pay the outstanding amount of ₹1,77,186/- on or before 15.10.2018. He submtited that HFC may be directed not to charge further interest and to waive the legal expenses.

10. The writ petition is disposed of with the direction that petitioners would deposit ₹1,80,000/- on or before 15.10.2018.

11. Keeping in view the calculation produced by HFC, this amount would discharge the liability of the petitioner No.1 in totality. The tentative legal expenses of ₹30,000/- shown in the calculation chart could not be justified during the course of arguments. The petitioners are not legally liabile to pay the same. Similar charges were deleted by the Division Bench of this Court in the case reported as ***Paramjit Singh Vs. UCO Bank Ghudani Kalan & Another 2007(49) RCR Civil 325,*** wherein it has been held as under:-

> *"We have heard learned Counsel for the parties at length and find that the expenses amounting to Rs. 43,300/- which have been claimed by the respondents are not legally payable by the petitioner. The learned Counsel for the respondents attempted to justify the incurring of aforesaid expenses by citing Security Interest (Enforcement) Rules 2002, but could not refer to any specific rule or provision of law or any material on record to substantiate that the expenses incurred by the respondents amounting to Rs. 43,300/- were in any way mandatory and necessarily required to be incurred. In the absence of any legal or valid justification, the liability of*

the same cannot be fastened on the petitioner.

12. On petitioners' making payment of ₹1,80,000/- on or before 15.10.2018, HFC shall issue No Dues Certificate to the petitioners.

13. It is, however, clarified that on failure of the petitioners to comply with the undertaking given in this Court, HFC would be at liberty to proceed for recovery of entire due amount in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

September 27, 2018
pankaj baweja

Whether speaking/reasoned: Yes / No

Whether reportable : Yes / No