218

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.28364 of 2017 (O&M)
Decided on 11.09.2018

Neelkanth Gramudyog Mandal (Regd.), Kurukshetra

Petitioner

Versus

State of Haryana and others

Respondents

* * *

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

Present : Mr. Rujhan Dhawan, Advocate
for the petitioner.

Mr. Ayuwan Singh, AAG, Haryana.

Mr. Samarth Sagar, Advocate
for the respondents.

* * *

<u>AVNEESH JHINGAN, J.</u>

The present writ petition has been filed seeking quashing of order dated 24.04.2017 (Annexure P-8) passed by Incharge, Haryana Khadi and Village Industry Board, Kurukshetra.

2. The petitioner is a Society registered under the Societies Registration Act, 1860. The petition has been filed through Kulbir Singh, Cashier of the Society. State of Haryana; Chief Executive Haryana Khadi and Village Industry Board, Manimajra; Incharge Haryana Khadi and Village Industry Board, Kurukshetra and the Collector, Kurukshetra have been arrayed as respondents No.1 to 4

respectively in the writ petition.

3. The petitioner availed a credit facility from Haryana Khadi and Village Industries Board. A loan of Rs.21 lakhs was sanctioned, it included Rs.17.22 lakhs as loan and Rs.3.84 lakhs as margin money/subsidy. In order to secure the loan, petitioner mortgaged its agricultural land in Village Khandauli and Bhukhri. The petitioner allegedly suffered financial crisis and defaulted in the repayment of loan. The petitioner approached the respondent-board for taking a lenient view with a request that auction proceedings be not initiated to recover the loan. Thereafter, the petitioner approached this Court by filing CWP No. 13513 of 2003. The writ petition was disposed of with directions to the respondent-board to decide the representation within six weeks. The representation was rejected by the Board and it was noticed that petitioner had mis-utilized a sum of Rs. 4,50,000/-.

4. In the year 2005 it is alleged that the petitioner applied for a no objection certificate from respondent No.3. A similar request was made in the year 2012. The petitioner was offered a settlement proposal vide letter dated 11.08.2014. It was offered that the penal interest will be waived off, if the unit deposits one time principal amount and simple interest within three months of the implementation of Consortium Bank Credit (C.B.C.) Scheme. No payment was made, respondent No.3 issued a notice dated 24.04.2017 asking the petitioner to deposit the outstanding dues as on 31.03.2017 of Rs. 25,22,903/-, failing the same would be recovered as arrears under the Land Revenue Act. On failure of the petitioner to make payment, the respondent initiated recovery proceedings and attached the

mortgaged property on 29.11.2017.

5. Being aggrieved of the attachment of the mortgaged property, the present writ petition has been filed.

6. On 13.12.2017 learned counsel for the petitioner submitted that the unit of the petitioner is lying closed since 2001. The petitioner is not liable to pay any penal interest in view of the letter dated 11.08.2014. He argued that the Board has not given credit of the amount deposited by the petitioner. He further stated that the petitioner is ready and willing to pay Rs. 7.5 lakhs within a period of one week and, thereafter, would settle the account with the Board.

7. Notice of motion was issued and it was ordered that the property of the petitioner may not be put to sale, subject to petitioner's depositing Rs.7.5 lakhs within a period of one week.

8. We have heard learned counsel for the parties and perused the record.

9. The contention that petitioner is not liable to pay penal interest is not well founded. Letter dated 11.08.2014 was a proposal for settlement and the condition was that if principal amount and simple interest is paid within three months, penal interest would be waived. The petitioner did not comply with the term of payment, hence, benefit cannot be availed under the settlement proposal.

10. In the written statement filed by the respondents, the mortgage deed of the property has been placed on record. From the perusal of the mortgage deed it is evident that as per Clause-7 the mortgaged property could not be sold without the previous consent of the Khadi Board.

Clause (7) of the mortgage deed is reproduced as under:

> "(7) The mortgagor hereby further covenants with the mortgagee Board that he will not alienate the mortgaged property by way of sale, gift or otherwise, subsequent to the mortgage, without the previous consent in writing of the mortgagee Board. If any such alienation is made, the mortgagee Board shall be at liberty and within its legal rights to demand repayment of entire loan/margin money recovery the same immediately, without referring to the period for which the loan is given, with normal as well as penal interest from the date of demand till the date of payment together with charges herein before referred to."

11. The respondents have also placed on record the judgment and decree dated 12.05.2017 passed by the Additional Civil Judge (Senior Division), Shabahad. From the decree it is evident that a suit for specific performance was filed by one Vipin Kumar against Kulbir Singh. Khadi Gramudoyog Board, Mani Majra, Chandigarh was also a defendant in the suit. On 26.08.2011 Kulbir Singh entered into an agreement to sell with Vipin Kumar for sale of the mortgaged property. The Board (defendant No.2) in the suit filed its written statement and objected to the agreement to sell as the property in question was mortgaged with it. Kulbir Singh admitted the factum of execution of agreement to sell of land in question and admitted the receipt of earnest money. He made a statement that he is ready to execute the sale deed in favour of the plaintiff but a sum of Rs. 25,22,903/- is due towards the Khadi Board. The suit was decreed with the direction to the plaintiff to execute the sale deed in favour of the plaintiff within two months after paying the outstanding amount of Rs.25,22,903/- to the

Khadi Board. The relevant portion of the order dated 12.05.2017 is quoted below:

> "6. I have heard learned counsel for both the parties and have gone through the case file very carefully.
>
> 7. The case set up by the plaintiff is that defendant No.1 entered into an agreement with the plaintiff on 26.08.2011 to sell the land measuring 11K-0M for a sale consideration of Rs.25,29,000/- per acre with all rights appurtenant thereto, khal, dol, trees, tubewell and defendant No.1 had received a sum of Rs.50,00,000/- as earnest money and fixed the date for execution and registration of the sale deed as 25.11.2011 on payment of balance sale consideration, in the presence of witnesses namely Updesh Sharma and Krishan Lal, and the same was attested by the Notary Public, Kurukshetra.
>
> On the other hand, the defendant No.1 has admitted the factum of execution of agreement of sale of the land in question and is also admitted the fact of receipt of earnest money and regarding the date fixed for payment of balance sale consideration and execution of the sale deed.
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> Even today i.e. on 12.5.2016, defendant no.1 Kulbir Singh has also made a statement before the court that he is ready to execute the sale deed but his amount of Rs.25,22,903/- is due towards the defendant no.2.
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> Thus, it is settled proposition of law that admission is the best evidence. In the present case, the defendant No.1 admitted the case of the plaintiff in a disciplined child manner.
>
> Herein, this court wants to refer the order 12 rule 6 Code of Civil Procedure which is reproduced as under:-
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> <u>Judgment on admissions:-</u>(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.
>
> 8. Keeping in view of the factual and legal position emanating from record as discussed above, it is made clear that defendant no.1 is ready to execute the sale deed in favour of plaintiff, therefore, the suit of the plaintiff is hereby

> decreed with no order as to costs to the effect that defendant no.1 will execute the sale deed of the land in question as mentioned in para no.1 of the plaint, in favour of the plaintiff within two months after paying the balance mortgaged amount of Rs.25,22,903/- to the defendant no.2. Accordingly, decree sheet be prepared and file be consigned to record room."

12. It would be pertinent to note that the facts regarding agreement to sell, filing of the suit for specific performance and judgment and decree dated 12.05.2017 were not disclosed by the petitioner in the writ petition. Further, it is worthwhile to note that the present petition has been filed through Kulbir Singh as Cashier of the petitioner-society, while Kulbir Singh was President of the Society at the time of sanctioning of the loan. It is he who inspite of Clause-7 of the mortgage deed entered into an agreement to sell with Vipin Kumar. The petitioner has not approached this Court with clean hands.

13. The conduct of the petitioner is contemptuous. On one hand he adopted various measures to delay the recovery of outstanding amount and on the other hand tried to dispose of the mortgaged property. The judgment and decree of the Additional Civil Judge (Sr. Division), dated 12.05.2017 has not even been complied with. Even before this Court, a statement that petitioner is willing to pay Rs. 7.5 lakhs and would, thereafter, settle the account with the Board, was scorned.

14. Keeping in view the facts of the case and the conduct of the petitioner, no case is made out for interference in exercise of writ jurisdiction under Article 226 of the Constitution of India.

15. The writ petition is, accordingly, dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

September 11, 2018
Pankaj/reema

Whether speaking/reasoned: Yes / No

Whether reportable : Yes / No