102 (2 cases)

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

Date of Decision : 20.02.2018

1) C.M No.2193-CII of 2017 in/and F.A.O No.680 of 2017 (O&M)

Ram Pal @ Ram Lal

...... Appellant

Versus

Haryana Financial Corporation and another

.... Respondents

2) C.M No.26852-CII of 2016 in/and F.A.O No.8035 of 2016 (O&M)

M/s Punjab Cotton Factory

...... Appellant

Versus

Haryana Financial Corporation and others

.... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

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Present : Mr. Harsh Aggarwal, Advocate
for the appellant (FAO-680-2017)

Mr. Manoj Kumar Sood, Advocate
for the appellant (FAO-8035-2016).

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AJAY TEWARI, J. (ORAL)

C.M No.2193-CII of 2017 & C.M No.26852-CII of 2016

For the reasons recorded, the applications are allowed. Delay of 6 days in refiling the appeal bearing FAO No.680 of 2017 and delay of 29 days in refiling the appeal bearing FAO No.8035 of 2016 is condoned.

F.A.O No.680 of 2017 (O&M) & FAO No.8035 of 2016 (O&M)

These two appeals have been filed against the judgment and order of the Additional District Judge, Bhiwani dismissing a petition under Section 31 of the State Financial Corporation Act, 1951 (hereinafter referred to as 'the Act'). The appeal bearing FAO No.680 of 2017 has been filed by the guarantor and the appeal bearing FAO No.8035 of 2016 has been filed by the borrowers.

The claim of the respondent-Haryana Financial Corporation was that the borrowers had taken different advances i.e. total amount of Rs.36 lacs odd and since they were not able to adhere to the financial discipline, the property of the firm was taken over in 1999. The same was sold but outstandings still remained, which at the time of the filing of the petition under Section 31 of the Act had amounted to Rs.1,71,37,490/- alongwith interest @ 22% per annum from 01.09.2012 in a term loan account and Rs.2,39,78,744/- with future interest @ 20.5% per annum from 01.06.2012 in another account. The borrowers had filed reply through one of the partners and guarantor had filed separate a reply. The stand of both of them was that they accepted that there were omissions on their part to make the periodic payments but the respondent No.1 had illegally not accepted various offers made by them under the One Time Settlement Scheme (OTS Scheme) announced by the respondent No.1 itself. Another plea which was taken was that the accounts having been declared as NPA as far back as in 1999 the petition under Section 31 of the Act was barred by limitation. Another plea which was taken that one of the partners had died at the time of filing of the said petition and thus the petition was not maintainable.

Taking the last objection first, there is no doubt with the proposition of law that decree or an award against dead persons is not maintainable and consequently I have no hesitation in holding that the judgment and order against Wazir Chand (who was dead at the time of filing of the petition and whose LRs were not brought on record by the respondent No.1) is not maintainable. That however cannot be said about the others as they were alive.

As regards the other arguments, the trial court found that during this interregnum the appellants had filed two civil suits and one writ petition bearing CWP No.4371 of 2013 where also their ground was that the respondent No.1 had illegally refused to accept the different offers made by them to settle their dispute under the OTS Scheme announced by the respondent No.1 from time to time. The trial court further noticed that all these challenges were dismissed and consequently rightly refused to go into the issue as to whether the offers made by the appellants were rightly or wrongly rejected. In my opinion, this is the correct view. Had it been the opinion of the appellants that their offer/s were wrongly rejected it was open to them to challenge the judgment in this regard of different courts, including this Court in the aforesaid writ petition but they did not do so and allowed those judgments to become final. In the circumstances, they can not now be heard to argue that the respondent No.1 had wrongly rejected their offer/s under the OTS Scheme.

Tied in with the issue of limitation, the trial court found that in all the civil litigation and in the writ petition in this Court, the appellants had acknowledged the amounts due against them and thus there was no bar of limitation and that the last OTS proposal had been rejected by the respondent No.1 on 26.09.2012 and held that the application was not barred under limitation. In my considered opinion, this finding is also correct. Once the appellants had themselves submitted to the respondent No.1 a claim for settlement, it was implicit that they acknowledged the debt but wanted to settle it and thus limitation for the respondent No.1 would start only after either accepting or rejecting the OTS proposal. No other point has been raised by the counsel.

Consequently, no fault can be found with the judgment and order of the trial court. Appeals are dismissed. No costs.

Since the main cases have been decided, the pending Civil Misc. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

February 20, 2018
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Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No