IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Letters Patent Appeal No. 1625 of 2018 (O&M)
Date of Decision: 06.12.2018

Huch Agro India Pvt. Ltd. .....Appellant

versus

State Bank of India and others .....Respondents

CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present : Mr. Sangram Singh Saron, Advocate, for the appellant.

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KRISHNA MURARI, CHIEF JUSTICE (oral)

This intra-court appeal under Clause X of the Letters Patent is directed against the judgment and order dated 21.08.2018 passed by the learned Single Judge dismissing the writ petition seeking a writ of mandamus to command respondents No.1 and 2, namely, State Bank of India to refund the upfront amount tendered by it under no lien account of respondent No.3.

2. Undisputed facts are that respondent No.3 set up a unit to manufacture steric acid and raw glycerin after availing the financial assistance from the State Bank of India. There was a default in repayment of the loan amount and thus the same was declared as Non-Performing Asset in the year 2010. The appellant herein entered into an agreement with respondent No.3 on 19.08.2011 to purchase the assets which were hypothecated with the bank as security to loan for a sum of Rs.10,50,00,000/-.

3. Respondent-State Bank of India initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short the 'SARFAESI Act') and a demand notice under section 13(4) of the said Act dated 08.10.2011 for a sum of ₹ 6,02,59,531.51 was issued.

4. The appellant-petitioner alleges to have deposited five demand drafts dated 13.02.2012 amounting to ₹ 40 lacs directly in the loan account of respondent No.3 with the State Bank of India. It is also pleaded that respondent-State Bank of India made an offer to respondent No.3 to settle the loan account through One Time Settlement (OTS) scheme on payment of ₹ 7,17,86,228.36 and the upfront amount of 25% as per the terms and conditions of the OTS amounting to ₹ 1,12,00,000/- was deposited by the petitioner on behalf of respondent No.3 with the State Bank of India. Another amount of ₹ 25 lacs is also alleged to have paid by the petitioner-appellant directly in the loan account of respondent No.3 through demand draft on 30.10.2012.

5. The bank vide letter dated 10.11.2012 informed the petitioner that since there was no tripartite agreement between the parties, hence the offer made by the appellant-petitioner, vide letters dated 27.10.2012 and 30.10.2012 spelling out its intention to deposit the balance amount was not acceptable to the bank.

6. Admittedly, the property of respondent No.3 hypothecated with the bank as security to the loan advance was auctioned under the provisions of the SARFAESI Act on 30.03.2014. The proceedings were challenged by making Securitization Application No. 94 of 2014 before the Debts Recovery Tribunal, Chandigarh. The appellant-petitioner intervened in the said proceedings by making two applications bearing IA Nos. 644 and 645

of 2014 for impleading them as party to the proceedings and to injunct the bank from removing the machinery from the factory premises of respondent No.3. Both the applications were dismissed by the Debts Recovery Tribunal vide order dated 03.07.2014. Thereafter the petitioner made a representation to the respondent bank dated 26.02.2016 for refund of the amount alleged to have been deposited by it with the bank in the loan account of respondent No.3. However, when no decision was taken, the petitioner approached this Court by filing writ petition out of which the present Letters Patent Appeal arises.

7. Learned Single Judge dismissed the writ petition by the order impugned in this appeal.

8. Learned counsel for the appellant-petitioner vehemently contended that the respondent bank is totally unjustified in retaining the amount deposited by the appellant-petitioner under the agreement with respondent No.3 to clear its debt account and once the action under the Act was taken against respondent No.3, the bank was under a legal obligation to refund the deposit made by the appellant-petitioner on behalf of respondent No.3.

9. We have considered the arguments advanced by learned counsel for the appellant and perused the record as also the impugned judgment.

10. A perusal of the pleadings as well as the material brought on record goes to show that there was no privity of contract between the appellant-petitioner and the respondent bank and the bank was not concerned with the source of the amount and the applications made by the appellant-petitioner in proceeding before the Debts Recovery Tribunal were dismissed and in case any amount was deposited by the appellant-petitioner

under some contract with respondent No.3, it was open to it to realize the same from the said respondent and the bank being not a party to the said agreement and there being no privity of contract it cannot be held liable to refund the amount which was deposited by the appellant-petitioner suo-moto in the loan account of respondent No.3. The said amount has rightly been adjusted in the loan account by the respondent bank treating it to be a payment made on behalf of respondent No.3 and there appears to be no illegality in the same.

11. In view of the above facts and discussion we see no good ground to take a different view than the one taken by the learned Single Judge and the impugned judgment does not call for any interference.

12. The appeal is devoid of merits and accordingly stands dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

06.12.2018
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Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No