IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.255 of 2019
Date of Decision: 15.01.2020

Rajpal Singh and another

....Petitioners

Versus

Union of India and others

....Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE ARUN KUMAR TYAGI

Present: Mr.Atul Sharma, Advocate for the petitioners.

Mr.Naveen Garewal, Advocate for
Mr.Aashish Godara Bishnoi, Advocate for respondent No.1.

Mr.Puneet Sharma, Advocate for respondent No.2.

RAKESH KUMAR JAIN, J.(Oral)

The petitioners are the partners of the Firm M/s Guru Teg Bahadur Rice Mill, who have prayed for the issuance of a writ in the nature of mandamus to declare the action of respondent No.2 for not issuing the No Objection Letter/Certificate as illegal and to further direct respondent No.2 to release the title deeds of the mortgaged property being 27 kanals 8 marlas situated at village Nangal Fida, PO Salala, Bhogpur, District Jalandhar after removing any kind of charge or lean created upon it before the revenue authorities.

In brief, the partnership firm Guru Teg Bahadur Rice Mills (hereinafter to be referred as 'Firm') obtained five term loans from respondent No.2 i.e. CC Limit (₹30 lacs), Term loan (₹70 lacs), Term

Loan (₹20 lacs) sanctioned on 23.09.2010, Term loan (₹15 lacs) and Term Loan (₹25 lacs) sanctioned on 19.11.2011. The loan account of CC Limit was settled but other four term loan accounts of the Firm became irregular and three ultimately declared non-performing assets (NPA) on 09.03.2015. As a result thereof, proceedings under Sections 13(2) and 13 (4) were initiated in terms of the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short the `SARFAESI Act').

Respondent No.2 also initiated arbitration proceedings in which the arbitration award dated 09.03.2017 was passed for an amount of ₹1,00,92,944.06/- including interest. Respondent No.2 filed an execution application of the said award whereas the Firm filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 (for short `the Act of 1996'). After protracted and detailed negotiations, One Time Settlement was arrived at between the parties in respect of the four accounts for lump-sum amount of ₹70 lacs. According to the petitioners, the said amount has already been paid and since the account has been shown balance of zero, the respondent No.2 had no right to detain the title deeds of the mortgaged property. The petitioners had thus earlier filed a Writ Petition No.26037 of 2018 in which the aforesaid facts were mentioned with an addition that the petitioners had made a representation on 20.9.2018 for release of the documents and title deeds of their properties but did not receive any response. Consequently, the writ petition was disposed of by this Court vide order dated

10.10.2018 without expressing any opinion on the merits of the case, directing respondent No.2 to take a decision on the representation dated 20.09.2018 in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioners. The representation of the petitioners was considered by respondent No.2 as the petitioners were afforded an opportunity of hearing through notice dated 22.11.2018 and the representation was thereafter rejected on 03.12.2018 on the ground that at the time of One Time settlement, the petitioners were partners of the Firm and had also agreed to regularise the KCC loan account by one of the other partners, namely, Bhupinder Singh and on that condition only the Bank respondent No.2 had accepted the One time settlement giving concession of ₹55.55 lacs in the loan account of the Firm and since the petitioners did not regularise the KCC loan account of the other partner Bhupinder Singh, therefore, the representation was rejected and title deeds were not released and hence the present petition has been filed.

Counsel for the petitioners has submitted that all the four term loans of the Firm have already been settled in One time settlement Scheme and the entire amount of ₹70 lacs was paid. It is further submitted that balance in all the four term loans is being shown as zero and therefore, the petitioners are entitled for "No Objection Certificate" by respondent no.2 and release of their title deeds of the secured assets.

On the other hand, counsel for respondent No.2 has submitted that negotiations for One Time settlement for the payment of

₹70 lacs regarding the four term loan accounts was in respect of regularisation of KCC limit account of ₹60 lacs of one of the partners, namely, Bhupinder Singh and in this regard, has referred to the letter signed by all the four partners of the Firm dated 10.10.2017 in which they have averred that "In view of the above you are requested to reduce/waive interest and charges levied in the above account and accept ₹70 lacs towards full and final settlement of the aforesaid account. We further undertake that if the above proposal is accepted by the Bank, we shall deposit ₹70 lacs within a period of one month. You are requested to release the security pledged with the Bank for securing the aforesaid loan on deposit of ₹70 lacs to the respective owner. Apart from the above, there is one KCC limit account of ₹60 lacs running with you in the name of Mr.Bhupinder Singh, who had been partner in GTB Rice Mills also. This account has no relevance with GTB accounts. However, we undertake that this account will also be regularised and as such Mr.Bhupinder Singh be allowed to continue the limit and to operate the account as per Bank norms. Kindly approve the above proposal. We undertake to honour our commitment and in case of default, the Bank shall be at liberty to initiate the legal action against us and start the recovery proceeding for recovery of bank dues."

Learned counsel for respondent No.2 has further referred to another letter signed by all the partners of the Firm, dated 15.11.2017 in which they had averred that "further to coming out of legal proceedings, a settlement proposal with the Bank has been worked out and approved by the Bank vide letter dated 11.10.2017 and accordingly we had to deposit a sum of ₹70 lacs by 11.11.2017 but due to non arrangement of funds we cannot deposit the funds within stipulated period hence you are requested to allow a time exemption to January 31, 2017 to clear the decided amount of settlement besides also give time till March 05, 2018 for regularisation of KCC limit running in the name of Mr.Bhupinder Singh (partner)."

It is further submitted that Bank had informed the petitioners vide its letter (Annexure R-2/10) in which it has been averred that we would like to draw your attention to your settlement proposal, whereby you agreed to regularise the KCC loan account in the name of Sh.Bhupinder Singh, partner of M/s G.T.B. Rice Mills. That aforesaid conditions were integral part of the settlement proposal signed and submitted by you, because of which, Bank agreed to allow you the concession of ₹55.55 lacs in loan account in the name of M/s GTB Rice Mills but it seems that you do not want to fulfill the terms and conditions of the settlement offer, as you have failed to regularise the account of Sh.Bhupinder Singh, Partner of your Firm M/s G.T.B. Rice Mills which has now become NPA and entire amount is due for payment. You are therefore advised to comply with terms and conditions of the settlement offer and adjust the KCC loan account in full and final so that Bank may release your security documents at the earliest."

From the aforesaid facts and circumstances, the question would arise as to whether respondent No.2 is justified in not releasing the title deeds of the secured asset in the absence of regularisation of the KCC account of Bhupinder Singh?

We have heard learned counsel for the parties and with their able assistance, have perused the record carefully from which it is evident that arbitration award against the petitioners for a sum of ₹1,00,92,944.06 including interest, was not executed because there was a settlement between the parties to set off all the four term loan accounts with payment of ₹70 lacs and regularisation of the KCC account of one of the partners of the Firm, namely, Bhupinder Singh. It is evident from the facts and circumstances narrated here-in-above, that though the Firm had deposited ₹70 lacs under the One Time Settlement proposal in respect of all the four term loan accounts but failed to regularise the KCC limit of the account of one of the partners Bhupinder Singh. Thus, it means that the petitioners much less the Firm has not performed their part of the contract in totality and had partly performed the same by depositing ₹70 lacs to settle the four term loan accounts though as per the letter dated 10.10.2017 all the petitioners have undertaken to regularise the KCC account of Bhupinder Singh also and had requested respondent No.2 to allow Bhupinder Singh to continue the limit and the Bank account as per bank norms with further undertaking that in case they failed to honour their commitment then the Bank shall be at liberty to take legal action and start the recovery proceedings.

In view of the aforesaid facts and circumstances, we do not find any error on the part of the respondents to declare their action for not releasing the title deeds of the petitioners of the secured asset even after settling all the four term loan accounts illegal. Hence, the present petition is found to be without any merit and is hereby dismissed. No order as to costs.

(RAKESH KUMAR JAIN)
JUDGE

15.01.2020 **(ARUN KUMAR TYAGI)**
Meenu **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No