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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 28713 of 2018
Date of Decision: 23.09.2019

M/S NAKODAR AGRO FOODS, PHILLAUR, DISTRICT JALANDHAR AND ANOTHER …… *Petitioners*

V/s.

ORIENTAL BANK OF COMMERCE, JALANDHAR ......*Respondent*

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

Present: Mr. Aalok Jagga, Advocate
for the petitioners.

Mr. Anil K. Ahuja, Advocate,
for the respondent.

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RAKESH KUMAR JAIN, J. (Oral)

Counsel for the petitioners has submitted that one M/s Guru Nanak Rice Mills, Village Pandori Khas, Tehsil Nakodar, District Jalandhar was the borrower against whom the respondent had initiated proceedings under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act") and recalled the outstanding amount of ₹15,67,19,642.12 paisa by way of notice dated 07.12.2016 issued under Section 13 (2) of the Act. The borrower could not clear the outstanding dues of the respondent-Bank and therefore, out of five mortgaged properties, one property i.e. Factory, Land and Building of Rice Sheller, measuring 28 Kanal 18 Marla situated in Village Pandori Khas, Tehsil Nakodar, District Jalandhar, was auctioned on 31.07.2018 in which Parmodh Kumar, partner of petitioner No. 1, was the highest bidder. After the confirmation of bid, 25% of the bid amount was deposited and remaining 75% of the bid amount was to be deposited within 15 days for the issuance of the Sale Certificate. The period of 15 days was to expire on 15.08.2018 but before the said date, petitioner No. 1 made a representation for extension of time in terms of Rule 9(4) of the Security Interest (Enforcement) Rules, 2002 (for short “the Rules”). The request made by petitioner No. 1 was accepted by the respondent and the period for depositing 75% of the bid amount was extended by 89 days to be calculated w.e.f. 31.07.2018. The last date of the extended period fell on 28.10.2018 which incidentally happened to be a Sunday. During this interregnum, petitioner No. 2 (Private Limited Company) came into being. It made a request to the respondent that on the payment of remaining 75% of the bid amount, Sale Certificate may be issued in its name. It is submitted that as per e-mail dated 22.10.2018 sent by the respondent, the prayer made by the petitioner No. 2 for issuance of Sale Certificate in favour of the private limited company instead of its partner was under consideration and in this regard reference could be had to the following extract taken from the said e-mail dated 22.10.2018:-

> “*Therefore, you are requested to please supply us relevant documents showing that the partnership firm has been converted to private limited company for further action in this regard. This is for your information and time bound action.*”

It is submitted that before the petitioners could have taken the appropriate steps in this regard, impugned order dated 26.10.2018 was passed and the amount deposited as 25% of the bid amount was forfeited. The prayer made by the petitioners for the extension of time for further 30 days was also declined on the plea that further extension was not permissible even in law.

Aggrieved against the said decision of the respondent-Bank, the petitioners have challenged the letters dated 22.10.2018 and 23.10.2018 and noting dated 26.10.2018, *inter alia*, on the ground that as per Section 10 of the General Clauses Act, 1897 (for short 'the Act of 1897') if the last date of the prescribed period falls on a holiday then the next working day is considered to be last date. In support of his submissions, he has relied upon two decisions rendered by the Supreme Court in the case of "***HUDA and another*** Vs. ***Babeswar Kanhar and another"*** ; 2005(3) RCR (Civil) 170 and in the case of "***Mohd. Ayub*** Vs. ***State of U.P. and others"***; 2009(17) SCC 70.

As against this, counsel for the respondent has submitted that firstly, permission was granted by the respondent for issuance of Sale Certificate in favour of the partnership firm and there was no decision taken to issue the Sale Certificate in the name of the Company for which the petitioners were insisting and secondly, from the correspondence of the petitioners, it was apparent that the petitioners were not ready with the amount of 75% of the bid amount even on 26.10.2018 or had made any effort to bring that amount on 29.10.2018. But insofar as Section 10 of the Act of 1897 is concerned, counsel for respondent has gracefully submitted that there is no quarrel with the proposition of law.

In order to rebut the stand of the respondent, counsel for the petitioner has referred to the Balance Certificate issued by the Capital Small Finance Bank in the name of Parmodh Kumar who is the erstwhile partner of the Firm and now one of the share holders of the Company which showed the total balance in his two accounts as ₹1,15,94,535.24 paisa whereas the liability of the petitioners towards the respondent-Bank was ₹101.475 Lakhs. It is further submitted by him that it is immaterial as to whether the entire money is paid by Parmodh Kumar (erstwhile partner or current share holder of the company) or by the Company itself because the respondent is only concerned with the amount of 75%. It is also submitted that during the pendency of this writ petition an order was passed by this Court on 14.01.2019 on the agitation of the respondent that the petitioners shall produce the certificate issued by the respondent-Bank, whether an amount of ₹1.01 crore is still available with them or not.

Counsel for the petitioners has submitted that he had produced the Balance Certificate issued by the Bank showing the aforesaid amount available in his accounts which is reflected in the order passed by this Court on 04.04.2019.

We have heard counsel for the parties and after perusal of the record are of the considered opinion that there is merit in the submissions of counsel for the petitioners on the basis of which this writ petition deserves to be allowed. The question which has been posed in this petition is that as to whether if the last date prescribed for performance of the act falls on a holiday, the next date has to be taken as the last date or the date prior to the said date as the last date?

In order to answer this question, reference could be had to Section 10 of the Act of 1897 which is reproduced as under: -

> *"10. (1) Where, by any [Central Act] or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:*

> *Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (15 of 1877), applies. (2) This section applies also to all [Central Acts] and Regulations made on or after the fourteenth day of January, 1887."*

There is no dispute that last date in the present case had fallen on 28.10.2018 which happened to be a Sunday, therefore, in terms of Section 10 of the Act of 1897 and the law laid down by the Supreme Court in the case of ***HUDA and another*** and ***Mohd. Ayub*** *(Supra)*, the next date i.e. Monday has to be treated to be the last date for the purpose of performance of the act at the instance of the petitioners.

In view of the aforesaid observations, the question posed is hereby answered in affirmative in favour of the petitioners.

Now, the question arises that as to whether respondent is justified in forfeiting 25% of the bid amount deposited by the petitioners at the time of bid?

Once, we have decided the legal question involved in this case in favor of the petitioners, therefore, we hold that the respondent has erred in forfeiting 25% of the bid amount deposited at the time of the bid.

The question then arises as to whether respondent is liable to consider the request of the petitioners for the issuance of Sale Certificate on payment of 75% of the bid amount as on 29.10.2018. In this regard, the Court has to find out as to whether that the petitioners or on their behalf amount of 75% was available or not?

We have perused the record and found that there is a balance certificate issued by the Capital Small Finance Bank Private Limited in favour of Parmodh Kumar who was an erstwhile partner of the firm and current shareholder of the company, had more amount in his account than the amount of 75% to be deposited for the purpose of issuance of Sale Certificate. It is also found by this Court that amount ₹1.15 Crore was still available with the petitioners when the certificate was produced during the pendency of the writ petition.

Thus, viewed from any angle, it is a fit case where direction can be issued to respondent-Bank to allow the petitioners to deposit the remaining 75% of the bid amount and in consideration thereof, the respondent-Bank is directed to issue the Sale Certificate to petitioner No. 2 after recognizing its entity having been born out of petitioner No. 1.

The needful shall be done within a period of one week if 75% of the bid amount is deposited by the petitioner forthwith.

In view of the aforesaid observations, the writ petition stands allowed.

(RAKESH KUMAR JAIN)
JUDGE

September 23, 2019
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(ARUN KUMAR TYAGI)
JUDGE

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No