IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-29894-2018
Date of Decision: 25.2.2019

Ram Gupta

...Petitioner

Versus

Debts Recovery Tribunal-II, Chandigarh and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

PRESENT: Mr. Aalok Jagga, Advocate for the petitioner.

Ms. Amandeep Kaur, Advocate for
Mr. Sandeep Suri, Advocate for respondent No.2.

AJAY KUMAR MITTAL, J.

1. Through the instant petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ of certiorari for quashing the order dated 6.11.2018 (Annexure P-20) passed by respondent No.1-Debts Recovery Tribunal-II, Chandigarh (in short “the Tribunal”) dismissing SA-218-2018 filed by the petitioner being time barred.

2. A few facts necessary for adjudication of the present writ petition as narrated therein may be noticed. The petitioner availed home loan from HDFC Bank for purchasing plot No. 182, Block N, South City-I, Gurgaon measuring 200 square meters on 4.6.2004. On 6.8.2005, it was taken over by the Punjab National Bank. The loan amount of ₹ 40 lakhs was sanctioned to the petitioner at 8.25% floating interest vide sanction letter dated 6.8.2005 (Annexure P-1) for a period of 20 years. Respondent

No.2 offered the petitioner to enhance the loan amount to ₹ 70 lakhs so that the additional amount of ₹ 30 lakhs could be used for construction of the house. Respondent No.2 imposed a pre-condition upon the petitioner to avail an insurance from their sister concern i.e. ICICI Lombard at a premium of ₹ 4,35,777/-. The said amount was sanctioned by respondent No.2 to be paid as premium to their sister concern. Accordingly, vide letter dated 29.7.2006 (Annexure P-2), a sum of ₹ 74,87,746/- was sanctioned by respondent No.2 in favour of the petitioner. The said insurance policy was cancelled on account of certain mistakes and an amount of ₹ 3,78,263/- was refunded by the ICICI Lombard to respondent No.2 and information was sent to the petitioner in this regard vide e-mail dated 26.7.2007 (Annexure P-3). Respondent No.2 instead of reducing the rate of interest started charging interest to 13.75% and vide letter dated 12.3.2009 (Annexure P-4) informed the petitioner. On realizing that the rate of interest had been shot off to 14.5% instead of 9.5% as applicable to the home loans, the petitioner made a complaint dated 3.7.2009 (Annexure P-5) to the Reserve Bank of India who informed the petitioner that the first a representation is to be made to respondent No.2 and only thereafter, the complaint could be filed. The petitioner took the matter with respondent No.2 who informed that they had already rectified the mistake and instead of loan against property in the letter, Annexure P-4, they had mentioned residential home loan. During this period, the petitioner had paid all the installments of ₹ 44,76,748.28 to respondent No.2. According to the petitioner, if the rate of interest would have been charged as per home loan, the account would have been regular. Due to charging not only 14-15% but also imposing penal interest at the rate of 24% over and above the same, it led the account of the petitioner as Non-

Performing Account (NPA). A notice dated 30.5.2011 (Annexure P-6) under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "the 2002 Act") raising a demand of ₹ 74,87,746/- was issued to the petitioner. The petitioner submitted objections dated 5.7.2011 (Annexure P-7) to the said notice pleading that earlier the petitioner had filed Civil Suit No. 101 of 2010 and the Delhi High Court vide order dated 29.9.2010 passed interim order and granted liberty to the petitioner to make the payment as per permitted rate of interest. Respondent No.2 gave a reply dated 30.7.2011 (Annexure P-8) to the petitioner mentioning that the rate of interest was mentioned in the loan documents. The Delhi High Court vide judgment dated 23.8.2011 (Annexure P-9) dismissed the suit of the petitioner being time barred. Respondent No.2 issued a possession notice dated 10.10.2012 (Annexure P-10). Against the said notice, the petitioner filed SA-222-2012. As per the orders (Annexure P-11 Colly), the Bank appeared before the Tribunal on 19.10.2012 and on its statement that no further proceedings shall be initiated, the interim order was ordered to be continued. Inspite of last opportunity being granted to respondent No.2 on 17.1.2013, it did not file any reply and its defence was closed on 19.3.2012. The matter was being adjourned before the Tribunal from time to time and ultimately on 18.1.2019, upon making a statement by the Bank that they are withdrawing the notice under Section 13(4) of the 2002 Act, the SA was dismissed as infructuous. Another possession notice dated 23.2.2018 (Annexure P-12) under Section 13(4) of the 2002 Act was issued to the petitioner. The petitioner had the intentions to settle the dispute and in the year 2011, he approached respondent No.2 with a draft of ₹ 30 lakhs dated 18.9.2014

(Annexure P-13), but to no avail. As per, Annexure P-14, the petitioner sent various messages to the Collection Manager of respondent No.2 for settlement of the loan account, but to no effect. The petitioner challenged the notice dated 30.5.2011 and possession notice dated 23.2.2018 (Annexures P-6 and P-12, respectively) before this Court by way of CWP-11545-2018. This Court vide order dated 8.5.2018 (Annexure P-15) issued notice of motion and subject to deposit of ₹ 30 lakhs granted interim order of maintenance of status quo. The petitioner deposited the aforesaid amount. However, this Court vide order dated 8.10.2018 (Annexure P-16) dismissed the said writ petition as withdrawn with liberty to the petitioner to take recourse to the remedies as may be available to him in accordance with law. Thereafter, the petitioner got prepared the SA under Section 17 of the 2002 Act and filed the same before the Tribunal on 3.11.2018 (Annexure P-17). Since the SA was barred by time, an application dated 3.11.2018 (Annexure P-18) was filed for condonation of 27 days' delay in filing the SA. Along with the application, the petitioner had also attached medical reports dated 29.10.2018 and 30.10.2018 (Annexure P-19). The Tribunal vide order dated 6.11.2018 (Annexure P-20) dismissed the application for condonation of delay as well as the SA being time barred. Hence, the present writ petition.

3. We have heard learned counsel for the parties.

4. Learned counsel for the petitioner submitted that respondent No.2 had issued notice under Section 13(4) of the 2002 Act on 23.2.2018 and the SA was to be filed within 45 days from the said date. However, the petitioner instead of filing the SA before the Tribunal had filed writ petition. The said writ petition was dismissed as withdrawn by this Court vide order

dated 8.10.2018 (Annexure P-16) with liberty to the petitioner either to approach the respondent-Bank or to take recourse to the remedies as may be available to him, in accordance with law. Thereafter, the petitioner prepared the SA and filed the same before the Tribunal. Since, the SA was time barred, an application under Section 5 of the Limitation Act, 1963 was filed for condonation of 27 days' delay in filing the SA. The Tribunal dismissed the said application for condonation of delay as well as the SA being time barred by holding that the petitioner had failed to explain the reasons for delay to its satisfaction.

5. This Court in **CWP-21519-2018 (M/s Oswal Spinning and Weaving Mills Limited and others v. UCO Bank and another)** and other connected writ petitions vide order dated 29.10.2018 holding that the Tribunal has power to condone the delay in filing the SA, had remitted the matter back to the Tribunal to decide the application for condonation of delay afresh on merits in accordance with the observations made therein.

6. The petitioner after withdrawing the writ petition on 08.10.2018 had filed the SA before the Tribunal on 03.11.2018, which was belated by 27 days. The delay on the part of the petitioner under the circumstances as noticed earlier cannot be attributed to negligence on his part. Therefore, the Tribunal erred in not condoning the delay of 27 days in filing the SA.

7. In view of the above and keeping in view the totality of facts and circumstances of the present case, the writ petition is allowed. The impugned order dated 6.11.2018 (Annexure P-20) passed by the Tribunal dismissing the application for condonation of 27 days' delay in filing the SA and the SA being time barred is set aside. The delay of 27 days' in filing the SA is condoned. The matter is remitted to the Tribunal to decide the SA

afresh on merits in accordance with the law.

(AJAY KUMAR MITTAL)
JUDGE

February 25, 2019 **(MANJARI NEHRU KAUL)**
gbs **JUDGE**

Whether Speaking/Reasoned	**Yes**
Whether Reportable	**Yes**