IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 15128 of 2019 (O&M)
Date of Decision:14.01.2020

Indusind Bank Limited and another

......Petitioners

Versus

Baljit Singh and another

...... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Amarjit Singh Virk, Advocate
for the petitioners.

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LISA GILL, J(Oral).

Prayer in this petition is for quashing of award dated 09.04.2019 (Annexure P-10), passed by the learned Permanent Lok Adalat (Public Utility Services), Rupnagar-respondent no.2, whereby the petitioners have been directed to issue 'No Due Certificate' within 15 days from 09.04.2019 and to pay a sum of ₹10,000/- as compensation for harassment caused to respondent no.1. Petitioners were also directed to pay a sum of ₹5000/- to respondent no.1-Baljit Singh as litigation expenses. It is further directed that, in case, 'No Due Certificate' is not issued to the applicant-Baljit Singh, within 15 days from 09.04.2019, the petitioners will have to pay another sum of ₹10,000/- to the applicant-Baljit Singh.

Undisputed facts of the case are that applicant-respondent no.1-Baljit Singh had secured a loan from the present petitioners for purchase of a tractor. The tractor was hypothecated with the petitioners. Applicant-respondent no.1-Baljit Singh duly repaid the loan amount and applied for a 'No Due Certificate'. 'No Due Certificate', was refused to be issued by the petitioners on the ground that applicant-respondent no.1-Baljit Singh, was a guarantor for another person, who had secured a loan for purchase of a vehicle other than the one purchased by the applicant. Loan qua the vehicle purchased by Baljit Singh stands repaid. In the other loan transaction, the applicant-respondent no.1-Baljit Singh, is reflected to be a co-borrower, i.e., the person purchasing the vehicle is the principal borrower and respondent no.1-applicant-Baljit Singh, is reflected as the second borrower. The principal borrower in the other case, defaulted. Proceedings were initiated by the petitioners, however, the matter was compromised and the suit for recovery withdrawn. There was again a default by the principal borrower. Applicant-respondent no.1-Baljit Singh, sought issuance of 'No Due Certificate' *qua* the loan borrowed by him, which admittedly stands repaid fully. Petitioners refused to issue the 'No Due Certificate' on the ground that the loan taken by the other person, was still outstanding. Accordingly, complaint under the Legal Services Authority Act, was filed by the applicant-respondent no.1-Baljit Singh.

Learned Permanent Lok Adalat, allowed the complaint and directed the present petitioners to issue the 'No Due Certificate' within 15 days and also directed payment of ₹10,000/- as compensation and ₹5000/- as litigation expenses to respondent no.1-Baljit Singh.

Aggrieved therefrom, present writ petition has been filed.

Learned counsel for the petitioners argues that in terms of Clause 20 of the Loan Agreement, the petitioners are well within their rights to withhold the 'No Due Certificate'. Clause 20 of the Loan Agreement, which is stated to be incorporated in both the loan agreements, reads as under;-

"20.0 **SET-OFF AND LIEN.**

20.1. Notwithstanding anything contained in this Agreement, the Lender shall have a lien over all the assets of the Borrower(s)/Co-borrower(s) in the Lender's control and a right of set off against any monies due to the Lender from the Borrower/ Co-borrower(s) and to combine all accounts of the Borrower(s)/ Co-borrower(s) for recovery of the Lender's dues hereunder.

20.2. It is hereby agreed and understood by the Borrower that, in the event the Borrower(s) defaults in payment of the Installments/charges/fees, without prejudice to the right of termination, the Lender shall have the right to set-off all monies, securities, deposits, other assets and properties of the Borrower's/Co-borrower' that is held by the Lender as secured asset, against the amount in respect of which the default has been committed under this Agreement or any other Agreement."

I have heard learned counsel for the petitioner and have gone through the file with his assistance.

It is not in dispute that so far as the loan secured by respondent no.1-Baljit Singh, is concerned, the entire amount has been duly repaid. There are no outstanding dues towards the petitioners. Insofar as the other loan amount is concerned, in which the principle borrower is somebody else, another vehicle stands hypothecated. Provision of set off and lien as relied upon, does not in any manner, entitle the petitioners to withhold the 'No Due Certificate' in a situation where the interest of the petitioners, is duly secured in the second loan.

Keeping in view the facts and circumstances as above, I do not find any ground whatsoever to interfere in the impugned award dated 09.04.2019, passed by the learned Permanent Lok Adalat (Public Utility Services), Rupnagar-respondent no.2.

Present writ petition is accordingly dismissed.

[LISA GILL]
Judge

14.01.2020
s.khan

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