IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5155 of 2021 (O&M)
Reserved on 18.07.2022.
Date of Decision: 03.08.2022

M/S. SHIWALIK PROPERTY DEVELOPERS PVT. LTD. THROUGH ITS DIRECTOR KISHORE NAYYAR AND ANOTHER

……..Petitioners

V/s.

BANK OF BARODA *…..Respondent*

CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE HARMINDER SINGH MADAAN

Present: Mr. Kunal Mulwani, Advocate,
for the petitioners.

Mr. Umang Khosla, Advocate,
for the respondent-Bank.

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M.S. RAMACHANDRA RAO, J.

In this Writ Petition the question which is to be considered is as to whether the respondent-Bank is entitled to claim a sum of ₹10 Lakhs from the petitioners towards "Other NPA Legal Charges" and ₹3,88,660.39 towards "Overdue Interest" or not?

We may point out that the main dispute regarding the loan dues of the petitioners owed to the respondent-Bank has been settled under the OTS Scheme for ₹3.34 Crores, and even the title deeds of the security assets of the petitioners mortgaged with the respondent-Bank, have been released to the petitioners along with 'No Due Certificate' by the respondent-Bank, but the respondent-Bank had made a claim for the above amounts in a statement of account issued to the petitioners on 07.12.2021, and this Court on 13.12.2021 had directed the petitioners to give an FDR for ₹14 Lakhs covering the above claims, pending decision as to whether such claims made by the respondent-Bank against the petitioners are maintainable or not.

It is not in dispute that the petitioners have given an FDR for ₹14 Lakhs which is lying with the respondent-Bank and only the said issue survives for consideration.

Though counsel for the petitioners sought to place reliance on the decision of this Court in the case of **Mohinder Pal Singh and another** Vs. **State Bank of India**[1] to contend that such claim is not maintainable, this aspect came to be considered by another Division Bench of this Court in the case of **J.S. International** Vs. **Punjab and Sind Bank**[2].

The Division Bench **J.S. International (2 supra)** held that under Section 13 (7) of the SARFAESI Act, 2002, all costs charges and expenses *which have been properly incurred* by a secured creditor or any expenses incidental thereto *are also recoverable* from the borrower, and observed that this provision of law was not brought to the notice of the Division Bench which decided the case of **Paramajit Singh** Vs. **UCO Bank Ghudani Kalan & Another**[3] which had been followed in the case of **Mohinder Pal Singh and another (Supra 1)**.

Thus legal expenses can probably be claimed from a borrower by a secured creditor under Sec.13(7). But they must be shown to have been *properly incurred*. So such expenses, if incurred, have to be supported by receipts, and cannot be claimed arbitrarily without any material in support of such claim. Therefore, the demand for exorbitant sum of ₹10 Lakhs under the heading "Other NPA Legal Charges" cannot be allowed in favour of the

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[1] Order dt. 20.10.20211 passed in CWP No. 11662 of 2010
[2] 2007 (4) PLR 747
[3] Order dt. 01.10.2007 passed in CWP No.6324 of 2007

respondent-Bank. In our opinion, only a nominal sum of ₹10,000/- can be granted in the absence of any material produced by the respondent-Bank in support of the said claim.

Coming to the issue of overdue interest of ₹3,88,660.39 which is also claimed by the respondent-Bank, it is the contention of the petitioners that just by showing a computerized account to the petitioner, such amount cannot be claimed without making the petitioners aware of the Policy of the Bank under which such interest is being claimed, and for what period.

The respondent-Bank has not filed any documentary evidence to show how such claim has been made for what period and what rate of interest by placing before us any such Policy for claiming it. The Division Bench of Orissa High Court in **Agasti Behera and Others** Vs. **Authorised Officer, ICICI Bank and Another**[4] while considering the question whether a particular sum can be claimed as interest or penal interest observed as under:-

> *"4. XXXXXXX*
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> *5. This Court takes note of the fact that instead of the liability of the payment of ₹7,40,669/- (which includes future installments with interest), an amount ₹11,16,317.33 has been demanded from the petitioner. A customer normally does not have access to the various policies of the Bank for charging various amounts, which may or may not be justified. Merely because computerized account of the petitioner is produced, without making the customer aware of the policy under which penal interest has been charged, the same, in our view, is highly unreasonable. Once the Bank has been confronted with the facts and has been asked to produce the policy under which they are charging penal interest, instead of producing the same, they have filed an affidavit agreeing to settle the account*

[4] Order dt. 13.05.2016 passed in WP (C) 7146 of 2016

on payment of a substantially lesser amount of ₹7,40,669/-, which also includes future installments with interest.

6. Scheduled banks are expected to be fair to the customers. Judicial notice can also be taken of the fact that many a times the Banks are resorting to unfair means for recovery of their dues by threatening the customers of dire consequences if the loan amount is not paid, which amounts may be highly unreasonable, as is clear from the facts of the present case."

(..Emphasis Supplied)

Therefore, we are of the opinion that respondent-Bank is not entitled to a sum ₹3,88,660.39 towards "Overdue Interest" from the petitioners.

Accordingly, the Writ Petition is disposed of directing the petitioners to deposit a sum of ₹10,000/- with the respondent-Bank within two weeks from the receipt of certified copy of this order, and on such deposit by the petitioners, the FDR for ₹14 Lakhs, given by the petitioner, shall be returned back to the petitioners by the respondent-Bank.

No costs.

(M.S. RAMACHANDRA RAO)
JUDGE

(HARMINDER SINGH MADAAN)
JUDGE

August 3, 2022.
Ess Kay

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