IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-5578-2022
Reserved on: 11.07.2022
Date of Decision: 19.07.2022

M/s ASB Enterprises

. . . . Petitioner

Vs.

The Financial Commissioner, Cooperation, Punjab and others

. . . . Respondents

****

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

****

Present: - Mr.D.V. Sharma, Sr. Advocate, with
Mr.Tushar Sharma and Ms. Pooja Yadav, Advocates,
for the petitioner.

Mr.Ashwani Prashar, Advocate, for respondent No.4.

Mr.Pankaj Gupta, Addl. A.G., Punjab.

****

M.S. RAMACHANDRA RAO, J.

Backgrounds of the case

In this Writ Petition, the petitioner is challenging order dt.24.02.2022 (P1) passed in Revision Petition No.121 of 2018 by the Financial Commissioner, Corporation, Government of Punjab (respondent No.1).

The petitioner is a proprietary concern. The proprietor of the petitioner is said to have been affected by riots which occurred in 1984 against persons of Sikh community.

The petitioner had obtained certain loans from Ropar Central Cooperative Bank Limited, Ropar, which is a Cooperative Society registered under the Punjab Cooperative Societies Act, 1961 [for short 'the Act']. It was later renamed as SAS Nagar Central Co-operative Bank (for short 'the Bank')

Since the petitioner was unable to pay the loans, the said Bank initiated proceedings under Sections 55 & 56 of the Act and obtained order on 03.03.1998 (**P2**) from the Deputy Registrar, Cooperative Societies, Fatehgarh Sahib for recovery of ₹12,62,920/- along with interest @ 20% per annum till realization, and another order also dt.03.03.1998 (**P3**) for recovery of ₹2,61,550/- along with interest @ 17% per annum.

The petitioner challenged the orders in WP No.483 of 2007 and obtained orders restraining the respondents from selling the land of the petitioner and a conditional order was passed restraining the sale subject to the petitioner depositing ₹2 lakhs and the matter was remitted back to the Joint Registrar (Planning), Cooperative Societies, Punjab for disposal, in accordance with law.

During pendency of the matter before the Joint Registrar (Planning), Cooperative Societies, Punjab, OTS-2007 Scheme was circulated by the Registrar, Cooperative Societies, Punjab. Petitioner claimed benefit of the said OTS.

The Joint Registrar (Planning), Cooperative Societies, Punjab directed the Bank to show as to how the case of the petitioner was not covered under the said OTS scheme, and directed the petitioner to deposit 25% of the amount by way of draft/cheque on or before 14.12.2007. The Bank was directed to calculate the amount of OTS and inform the petitioner on 22.12.2007 and the petitioner was directed to deposit 25% of the amount on 24.12.2007.

Within the said short duration, petitioner could not deposit 25% amount and the application of the petitioner was dismissed by the Joint Registrar (Planning), Cooperative Societies, Punjab on 28.02.2008.

But subsequently another OTS-2011 Scheme was introduced by the Registrar, Cooperative Societies, Punjab vide Memo No. Loan/CE/2/OTS/178/118 dt.28.02.2012 (**P7**).

Petitioner made a request for benefit of the said OTS claiming that it is fully covered under it.

The same was rejected by the Screening Committee on 01.04.2013.

Petitioner then filed CWP-9273-2013 contending that no reasons were assigned for such rejection. In the said Writ Petition, the Bank took a plea that the petitioner should avail the remedy before the Joint Registrar concerned against the order rejecting the OTS.

On 11.07.2013, a Division Bench of this Court directed the Screening Committee of the OTS-2011 Scheme to re-examine the request for OTS submitted by the petitioner keeping in mind certain later developments referred to it in an order passed in CWP-17218-2008, and one month time was given to the Screening Committee to do so.

But the Screening Committee rejected vide **P-9** dt. 06.08.2013, the case of the petitioner on the ground that the Bank would have to return ₹60.21 lakhs along with interest awarded by the Registrar, Cooperative Societies, Punjab to the auction purchasers in such an event, and it was not in the interest of the Bank to grant OTS to the petitioner.

<u>The Joint Registrar vide order dt.4.6.2014 holds petitioner is entitled to benefit of the OTS</u>

Petitioner filed Petition No.41 of 2013 challenging the order of the Screening Committee dt.06.08.2013 before the Joint Registrar, Cooperative Societies, Patiala.

By order dt.04.06.2014, the Joint Registrar, Cooperative Societies, Patiala Division, Patiala held that the petitioner is fully covered under the OTS-2011 Scheme and he directed the Screening Committee to consider the case of the petitioner keeping in view the OTS-2011 Scheme.

<u>The Special Secretary vide Order P10 dt.3.3.2015 held petitioner is entitled to benefit of OTS-2011</u>

This was questioned by the respondent-Bank before the Special Secretary, Cooperation, Punjab under 69 of the Act in Revision Petition No.174 of 2014.

The Special Secretary, Cooperation, Punjab passed order (**P-10**) on 03.03.2015 noting that this Court had directed in its order dt.11.07.2013 in CWP-9273-2013 for considering the case of the petitioner under the OTS scheme by the Screening Committee; the Screening Committee in its order dt. 06.08.2013 did not give any reason for rejecting the claim of the petitioner for OTS only ; on the ground that it would have to return the money deposited by the auction purchaser with interest, petitioner was denied the benefit of the OTS; that the Department of Industries and Commerce, Government of Punjab had issued a notification on 10.12.2009 stating that cases of riot effected borrowers would be covered under the OTS Scheme and only 4% (compounded half yearly) on the outstanding principal plus expenses on 01.04.1992 should be recovered. *It was also held that the loan of the petitioner* *is fully covered under the OTS-2011 Scheme issued by the Punjab State Cooperative Society Bank Limited, Chandigarh*. It was held that no illegality is found in the order of the Joint Registrar, Cooperative Societies, Punjab and the same is upheld, and the Revision Petition is dismissed. The Special Secretary, Cooperation, Punjab then directed the Screening Committee to take a fresh decision in accordance with the provisions of the OTS Scheme within two months from the date of receipt of the certified copy.

The Screening Committee vide P-11 dt.27.7.2015 holds petitioner is not entitled to benefit of the OTS contrary to decision of the Special Secretary in P-10 dt.3.3.2015

When the matter went back to the Screening Committee, it *ignored* the finding of the Special Secretary, Cooperation, Punjab in her order dt. 03.03.2015 in Revision Petition No.174 of 2014 (that the case of the petitioner is fully covered under the OTS-2011 Scheme), and it rejected vide **P-11** dt.27.7.2015, the claim of the petitioner. After referring to the past events, the Screening Committee observed that loss would be caused to the Bank if the petitioner is granted benefit under the OTS since it was under pressure to return the money of the auction purchaser with 9% compound interest. Screening Committee also held that petitioner had not complied with the order dt.28.02.2008 of the Joint Registrar (Planning), Cooperative Societies and did not deposit the 25% of the amount along with his application for OTS, and so it was clear that the petitioner was trying to delay the interest. It was further observed that as per decision of this Court in CWP-13536-2004, the Bank is at liberty to recover the amount was per award since the award/order obtained by the Bank on 03.03.1998 had attained finality.

Reference is also made to the terms of the Scheme which made it inapplicable to cases of fraud, malfeasance and willful default.

The Joint Registrar again holds that petitioner is entitled to benefit of the OTS-2011 in P-12 order dt.5.1.2016

Petitioner challenged this order again before the Joint Registrar, Cooperative Societies, Patiala in Revision Petition No.66 of 2015.

The Joint Registrar, Cooperative Societies, Patiala allowed the Revision filed by the petitioner vide order dt.05.01.2016 (**P-12**) in Revision Petition No.66 of 2015 and set aside the order dt.27.07.2015 of the Screening Committee and directed the Screening Committee to take a fresh decision under OTS-2011 Scheme categorically holding *inter alia* that the *petitioner's case would fall within the ambit of OTS.*

The impugned order P-1 dt.24.2.2022 of respondent no.1

The Bank again questioned this order in a further Revision before the Financial Commissioner, Cooperation, Punjab in Revision Petition No.121 of 2016. On 24.02.2022, the Financial Commissioner, vide **P-1** order allowed the Revision filed by the Bank and set aside the order passed by the Joint Registrar, Cooperative Societies, Patiala Division, Patiala on 05.01.2016 in Revision Petition No.66 of 2015.

The Financial Commissioner observed that the Screening Committee had considered the case of the petitioner three times in view of the orders passed by the higher authorities such as the High Court and that every time it did not find the case of the petitioner eligible under the relief of the OTS; that the Screening Committee in its decision dt.27.07.2015 had relied upon an order dt.11.03.2006 of the High Court passed in CWP-13536-2004 wherein it was held that the Bank was at liberty to recover the amount as per award as the award had become final; that the petitioner had filed a Petition No.483 of 2007 in which the award passed against the petitioner was challenged and prayed to stay the auction of the land which was mortgaged with the Bank to secure the loan, which was fixed for 10.10.2007; though the petitioner was directed to deposit 25% of the total outstanding by 14.12.2007, it had failed to do so; and therefore, it is not entitled to the benefit of the OTS.

Filing of Present Writ Petition

Challenging the same, this Writ Petition is filed.

Contentions of the parties and consideration by the Court

Counsel for the petitioner contended that once the Special Secretary, Cooperation in order **P-10** dt.03.03.2015 in Revision Petition No.174 of 2014 recorded a finding that the petitioner is eligible for the benefit under the OTS-2011 scheme, the said finding rendered inter-parties between petitioner and the Bank was binding on the Bank and Screening Committee of the Bank, and the Screening Committee, constituted under the OTS-2011 Scheme by the Bank, cannot take a contrary view and hold that the petitioner is not entitled for relief under the OTS-2011 Scheme in its order **P-11** dt.27.07.2015.

According to him, the finding recorded in the **P-10** order dt.03.03.2015 by the Special Secretary, Corporation operates as *res judicata* and the Screening Committee which is subordinate to the Special Secretary, Corporation in *hierarchy* is guilty of insubordination by defying the Special Secretary, Corporation and giving a finding contrary to the one given by the Special Secretary, Corporation.

He contended that the finding recorded in the **P-10** order dt.03.03.2015 by the Special Secretary, Corporation operates as *resjudicata* and is binding on the respondent No.1 as well and the said authority had taken into consideration irrelevant facts and ignored relevant facts and erroneously held against the petitioner.

Counsel for respondents No.1&4, on the other hand, contended that since the Special Secretary, Corporation at the end of the **P-10** order dt.03.03.2015 had directed the Screening Committee to take a fresh decision in accordance with the provisions of the OTS Scheme within two months, the finding recorded by the Special Secretary, Corporation in the earlier part of said **P-10** order dt.03.03.2015 (that the petitioner was fully covered under the OTS-2011 Scheme) was not binding and nothing prevented the Screening Committee from taking a contrary decision.

We are unable to agree with the said contention of the respondents No.1&4.

As rightly contended by counsel for the petitioner, once there is a finding given by the Special Secretary, Corporation, in the **P-10** order dt. 03.03.2015 passed in Revision Petition No.174 of 2014 that *the petitioner is fully covered under the OTS-2011 Scheme*, the said finding would bind the Screening Committee, and the Screening Committee cannot take a different decision from that of the Special Secretary and hold that the petitioner is not entitled to relief under the OTS-2011 Scheme. It would be an act of gross insubordination by the Screening Committee, which is otherwise bound by the order of the superior authority i.e. the Special Secretary, Cooperation, and the Screening Committee had no business to differ from the decision of the Special Secretary. Though the last part of order of the Special Secretary did permit the Screening Committee to take a fresh decision, it does not mean that the finding about petitioner being eligible for benefit under the OTS-2011 had been watered down in any way. Such a finding continues to bind the Screening Committee and it can take a fresh decision only on the said lines and not otherwise.

We are also of the opinion that in the impugned order **(P1)** dt.24.02.2022 passed by respondent No.1, he has not considered the matter in the above perspective and also ignored the fact that the finding given by the Special Secretary, Corporation, Punjab in Revision Petition No.174 of 2014 that the petitioner is fully covered under the OTS-2011 Scheme was binding on him also as per the principle of *res judicata*. Even, he could not have taken a view contrary to that taken by the Special Secretary, Corporation, Punjab in Revision Petition No.174 of 2014 on 03.03.2015 (**P-10**).

We may also pointed out that the OTS-2011 Scheme (**P-7**) mentioned in sub-Clause (f) in Clause 3.0 that the *scheme would cover suits filed and debts decreed after settlement is reached also* and even such cases are entitled to be considered under the Scheme.

Thus, even though there were orders passed against the petitioner on 03.03.2008 for recovery of the loans borrowed by it from the Bank, by virtue of sub-Clause (f) in clause 3.0, the petitioner would still fall within the ambit of the OTS-2011 Scheme.

This is also fortified by Clause 4.2 of the said Scheme which states as under:

> *"4.2 <u>Position of Suit filed cases</u>:*
> *Since in almost all the cases where settlement under this scheme is sought, different courts under Punjab Cooperative Societies Act, 1961 and or other courts would have passed awards/decisions against defaulters and such awards/decisions against the defaulters and <u>such awards/decisions shall stand amended to the extent of settlement amount arrived at under this Scheme</u>. The*

> *PACS/Bank shall not resort to execute such an award/decision after the settlement under the scheme. However, a Bank will be liberty to execute the award/decision in case of default by the borrower under the Scheme. After the settlement and repayment of dues thereof in accordance with the settlement made, the PACS/Bank shall issue No Due Certificate to the borrower and will release the security, if taken at the time of advancement of loan"*

A reading of the above clause also indicates that even if awards/decisions were given against defaulters such as petitioner under the provisions of the Act, such awards/decisions against the defaulters would stand *amended* to the extent of settlement amount arrived at under the Scheme; and the Bank would be at liberty to execute the award/decision *only* in case of default by the borrowers of deposit of the *settlement amount* under the Scheme.

The settlement amount has to be determined by the Revisional authority on a recommendation by the Screening Committee as per Clause 6.0 of the scheme.

Admittedly it has never done so since Screening Committee always took a view adverse to the petitioner that it is not entitled to the benefit of the OTS-2011 Scheme by defying the Special Secretary, Corporation, who had held in the order **P10** dt.03.03.2015 in RP-174-2014, that the petitioner is covered under the Scheme.

When there is no determination of the settlement amount at all made under the OTS Scheme by the competent authority and communicated to petitioner, respondent No.3 cannot complain that the petitioner had failed to deposit 25% of the *settlement* amount under the Scheme.

The respondent No.1 has misconstrued the Scheme and had taken a view that since the petitioner did not deposit 25% of the *total outstanding* in 2007 (not *settlement amount* under OTS-2011 which was never determined and communicated to petitioner*)*, the Scheme entitles the Bank to execute the award.

Respondent No.1 has ignored the fact that the OTS-2011 Scheme in Clause 4.2 speaks of the *settlement amount* not being paid by the defaulter/borrower and does not make any reference to the *total outstanding amount due*.

The reliance by respondent No.1 on the order dt. 11.03.2006 in CWP-13536-2004 to the effect that the Bank is at liberty to recover the amount as per award after it became final is also not proper, since after the said order dt.11.03.2006, OTS-2011 Scheme had been introduced, and the petitioner cannot be denied the benefit of the said OTS once the Special Secretary, Corporation in RP-174-2014 had passed order **P10** on 03.03.2015 recording a finding about the petitioner's eligibility to receive the benefit under the said Scheme.

There appears to be a complete non-application of mind by respondent No.1 in the matter to the relevant parameters and he has misdirected himself and taken into account irrelevant facts to deny relief to the petitioner under the OTS-2011 Scheme.

Therefore, the impugned order is liable to be set aside.

Conclusion by the Court

In this view of the matter, the Writ Petition is allowed; order **P1** dt.24.02.2022 passed by respondent No.1 in RP-121-2016 is set aside and it is declared that the petitioner is eligible for relief under the OTS-2011 Scheme; and consequential steps shall be taken by the respondents to calculate the settlement amount within *four weeks* from the date of receipt of certified copy of this order and the petitioner be communicated the same; the petitioner shall pay it within *three months* from the date of receipt of such communication.

Only in the event the petitioner commits default in payment of the settlement amount as directed above, the respondent-Bank is entitled to enforce the awards/orders dt.03.03.2008 obtained by it under the provisions of the Act and not otherwise. No costs.

(M.S. Ramachandra Rao)
Judge

19.07.2022
Vivek

(H.S. Madaan)
Judge

1. Whether speaking/reasoned? *Yes/No*
2. Whether reportable? *Yes/No*