IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-11183-2016 (O&M)
Date of decision: 30.01.2024

M/s Surya Overseas, Panipat

...Petitioner

VERSUS

India Bulls Housing Finance Ltd. and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Akshay Jindal, Advocate;
Mr. Vijayveer Singh, Advocate and
Ms. Bhavya Vats, Advocate for the petitioner.

Mr. Paras M. Goyal, Advocate and
Mr. Vipul Sharma, Advocate for respondents No.1 and 2.

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VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the award dated 04.04.2016 whereby the application filed by the petitioner-sole proprietorship under Section 22(C) of the Legal Services Authorities Act, 1987 has been dismissed by the Permanent Lok Adalat (Public Utility Services), Panipat, Camp Court at Sonipat.

2. Briefly the facts are that the petitioner filed application before the Permanent Lok Adalat (Public Utility Services), Panipat, Camp Court at Sonipat, averring that it had obtained loan of Rs.1,25,15,959/- on interest @ 13% per annum against property vide sanction letter dated 31.01.2013 to be

prepaid in 144 installments of Rs.1,72,037/- each. It was also averred that despite an assurance that there will be no processing or foreclosure charges, an amount of Rs.1,75,776/- was levied against processing charges. Further, the petitioner was forced to adjust the balance loan on 04.08.2014 and an amount of Rs.6,73,797.79 was deducted towards foreclosure charge, in violation of law. The petitioner claimed return of the said amount along with interest @ 24% per annum and compensation for mental and physical harassment.

3. The respondent filed its reply before the Permanent Lok Adalat (Public Utility Services) raising various objections including that a Hindu Undivided Family had obtained the loan against an equitable mortgage. The fee/charges have been rightly deducted as per the terms & conditions of the loan agreement and the petitioner is not entitled to any refund. On failure of conciliatory proceedings, adjudication was undertaken under Section 22C(8) of the Legal Services Authorities Act, 1987. On consideration of evidence, the Permanent Lok Adalat (Public Utility Services) dismissed the application by recording as under:-

> ***"7. After hearing the arguments of the ld. counsel for the parties and going through the documents placed on the file by both the sides, It is clear that though the applicant, in its application, has also challenged the recovery of process charges of Rs.1,75,776/- by the respondents. But at the time of arguments, the ld. counsel for the applicant had stated at the bar that he did not press the point that the process fee has been wrongly charged from the borrowers. This has been***

rightly done by the ld. counsel for the applicant as all the borrowers had admitted to pay Rs.1,75,776/- the process fee as applicable which is also clear from loan sanction letter (copy annexure R2). So, in view of this position, it is held that the aforesaid amount has been rightly charged from the applicant and its co-borrowers.

8. The contention of the ld. counsel for the applicant that the amount of Rs. 6,73,797.79 charged from the applicant towards foreclosure/pre-payment charges was wrong, is devoid of any force. Regarding pre-payment, article 1 (j) of annexure R3 lays down that "pre-payment" means premature re-payment(whether in part or in full) as per the terms and conditions laid down by IHFL (Indiabulls Housing Finance Limited) in that behalf and in force at the time of pre-payment. Article2.9 of this document further lays down as under:

> *"Pre-payment of the loan: That IHFL may in its sole and absolute discretion and subject to such terms and conditions as IHFL, may prescribe and also upon the payment of pre-payment charge which has been mutually decided and are specified in the applicable schedule on the amount so prepaid, permit pre-payment/acceleration in payment of EMIs at the request of the borrower's subject to that no pre-payment shall be made within the number of months (as mentioned in the schedule) of the*

> ***commencement of the EMIs. The borrower's further agrees that IHFL may specify from time to time, the minimum amount of pre-payment/amounts payable on account of acceleration of EMIs."***

The schedule attached to annexure R3 shows that the pre-payment charges shall be levied at 5% during the initial 2 years from the date of first disbursal and 3% thereafter on the principal outstanding. The document annexure R3 and schedule thereto have been duly signed on behalf of the applicant as well as by its co-borrowers, therefore, it does not lie in the mouth of the applicant to say that the amount of Rs.6,73,797.79 has been wrongly charged towards foreclosure/pre-payment charges because these terms and conditions were agreed to between the parties. It is a settled proposition of law that if a document is signed by a person then, it is presumed that he had signed it after accepting the correctness of the contents thereof until & unless proved to be otherwise.

9. The Reserve Bank of India has circulated the guidelines on fair practices code for Non-Banking Financial Companies vide annexureA4. The Reserve Bank of India vide Annexure A5 has also issued guidelines to all Non-Banking Finance Companies/Residuary Non Banking Companies for non-levy of foreclosure charges/pre-payment penalty on floating rate loans sanctioned to individual borrowers only

and not to the company, firm etc. Similarly, annexure R4 dated14.08.2014 issued by National Housing Bank to all registered Housing Finance Companies lays down that the foreclosure charges/pre-payment penalty on floating rate term loans sanctioned to individual borrowers will not be charged. Annexure R5, also issued by National Housing Bank to all the Registered Housing Finance, is clarificatory to circular annexure R4. The condition No. 3 of annexure R5 lays down that the applicability of the circular annexure R4 is on foreclosure charges/pre-payment penalty in respect of all floating rate term loans sanctioned to individual borrowers only and the loan in which company, firm etc is a borrower or co-borrower, therefore, is excluded from its purview. Meaning thereby, if any, individual with company, firm etc, has availed of floating term loan, then the foreclosure charges/pre-payment penalties would be leviable. Thus, the circulars, the copies of which are annexureA4 & A5, cannot be taken into consideration keeping in view the circulars, the copies of which are annexure R4 & R5.

10. The observations made by National Consumer Disputes Redressal Commissions, New Delhi & Delhi State Consumer Disputes Redressal Commission, New Delhi in cases titled as Shishir Tiwari's, HDFC Ltd's, Prabhaben Sharma's &Aar Kay fin Lease (P) Ltd's cases(supra) have no applicability on the case in hand because those cases pertained to the loans

taken by individuals and not by the individuals alongwith company, firm etc. Similarly, the facts and circumstances of the cases titled as Naresh Malhotra's and Vijaya Bank's cases (supra) are also distinguishable from those of the present one because in those cases also, the facts were different. In those cases, the terms and conditions of agreement duly signed by the parties did not disclose anywhere about any rate of charges to be levied on the borrowers on pre-payment amount. However, in the case in hand, in the schedule attached to the loan agreement, it is clearly mentioned that pre-payment charges shall be levied at 5% during the initial 2 years from the date of first disbursal and 3% thereafter on the principal outstanding. These terms, as noted above, were agreed to by both the parties under their signatures. In case No.5/2009, the majority of the Competition Commission of India has held that there was no violation of Section 4 of the Competition Act 2002.The ld. counsel has produced the copy of **dissenting** ***order passed by Sh. R. Parsad Hon'ble Member of the said commission and the order of passed by majority. So, this order also does not come to the aid of the applicant in any way.".***

4. It was thus held that the exemption from foreclosure charges was applicable only to individual borrowers and not when they are firm/company etc.

5. Hence, the present petition.

6. The question which arises is as to whether a sole proprietorship would fall in the definition of an individual or not and also to determine whether loan in the present case was to a sole proprietorship or to a Hindu Undivided Family.

7. Learned counsel appearing on behalf of the petitioner contends that the loan in question had been sanctioned in favour of the sole proprietorship and that an agreement was also executed with the sole proprietorship, however, the respondents levied the undue charges by treating the petitioner as a Hindu Undivided Family (HUF) and not as an individual. He further contends that the issue pertaining to an individual and a sole proprietorship has already been decided by this Court in **CWP-19796-2018** titled as **'Association of Property Professionals** Vs. **State of Haryana and others**' on 12.12.2022 reported **2023(1) RCR (Civil) 617**, as per which it was held that the "Proprietary concern" and the "Proprietor" are one and the same and they cannot be treated as separate juristic entities. Relevant extract of the above judgment reads as under:-

> ***"17. In the above-said background, it is essential to look into the definition/interpretation of sole proprietorship under various other statues/statutory framework as an external aid to assign meaning to the said phrase. In the context of the taxation law, a sole proprietorship business in India is not taxed as a different legal entity. Rather, the business owners file their business taxes as a part of their individual tax returns. Similarly, under the Chartered Accountants Act, 1949, Section 2 (haa) defines sole proprietorship to mean***

individual who engages himself in the practice of accountancy or offers to perform his services refer to in clauses (ii) to (iv) of Sub Section 2. Thus, the entity of sole proprietorship has been described as that of the individual himself. Further, a sole proprietorship does not require any mandatory registration under any law. The requirement for registration of license is only specific to the nature of the business being undertaken. There is no regulatory or statutory mechanism which gives a distinct entity to a sole proprietorship other than that of the individual-the owner himself.

18. It is thus a well settled position in law that a proprietory concern and the proprietor are one and the same and that they cannot be treated as separate juristic entities. The proprietary concern derives its identity and individuality from the proprietor and subsumes itself in the proprietor. Segregation of the two is incomprehensible in law when it comes to determining their rights and liabilities and legal fiction regards them as one. They would thus fall under the definition of an individual. Consequently, the petitioners as sole proprietors cannot be treated as an entity "other than individual" when the registration as a Real Estate Agent is in the name of the proprietary concerned. The demand raised through Public Notice (Annexure P-8) is thus bad and unsustainable and the petitioners would be liable to pay the

registration charges/renewal charges as are applicable to the individuals instead of the category "other than individual".

8. Reliance is further place on the judgment **dated 11.10.2023** passed by this Court in **CWP-35310-2019** titled as '**Om Prakash Narang** Vs. **The Permanent Lok Adalat for Public Utility Services and another'** to contend that no foreclosure charges could be levied on individual borrowers.

9. It is thus argued that the issue already having been decided on both the counts by this Court, the award passed by the Permanent Lok Adalat (Public Utility Services) deserves to be set aside.

10. Counsel for the respondents does not dispute the judgments rendered by this Court, however, he contends that the loan in question was sanctioned in favour of the Hindu Undivided Family and the same cannot be equated to a sole proprietorship. Hence, the charges have rightly been held deductable by the Permanent Lok Adalat (Public Utility Services).

11. Adverting to the above-said objection of the counsel for the respondents, learned counsel for the petitioner has referred to the loan application form submitted by the petitioner wherein it has been averred that the nature of organization mentioned in the loan application form was "Proprietorship". He further contends that the loan application form in question was signed by the applicant individually along with co-applicant/guarantor (Anita Chaudhary). He further refers to the agreement executed between the parties, which is at Annexure P-2, wherein in the stamp 'HUF/Prop.' is specifically mentioned. It is contended that the use of

a "/" in the stamp has to be seen and interpreted in the context of the application submitted. Once a substantive application was itself submitted as a sole proprietorship, a mere fixation of the stamp also mentioning HUF would not change the nature and character of the borrower.

12. Counsel for the respondent, on the other hand, hence made a reference to Annexure R-1, which is a loan sanction letter and has contended that the said loan sanction letter was signed by the petitioner as Hindu Undivided Family along with other co-applicants/guarantors. He further refers to the signatures of all these persons also being affixed on the terms & conditions on the loan sanction letter dated 31.01.2013. It is hence argued that the loan was infact sanctioned in favour of the Hindu Undivided Family and not in favour of the petitioner. He further contends that at the time when an application was preferred before the Permanent Lok Adalat (Public Utility Services), the same was filed through the authorised representative-Vivek Kumar whereas the present writ petition has been filed by the proprietor himself. It is thus contended that for the loan to have been advanced in favour of the petitioner, the initial application ought to have been filed through the sole proprietor himself.

13. No other argument has been raised by the parties.

14. I have heard learned counsel appearing on behalf of the petitioner and have gone through the documents appended along with the present writ petition as well as the contentions raised.

15. The issue is undisputed so far as the entity of "Proprietor" & "Proprietary entity" is concerned. Further as a proprietorship is not governed by any statute, there is no bar on a Hindu Undivided Family becoming a

proprietor. In a commercial transaction (assessment), entity of Hindu Undivided Family may be separate from individuals of the Hindu Undivided Family. Further, a Hindu Undivided Family consists of a common ancestor and all his lineal descendants including their wives and unmarried daughters. One person cannot form a Hindu Undivided Family. The documents thus submitted by the petitioner need to be perused to determine the true nature of the transaction. A perusal of the loan application form shows that it has the name of applicant Sudhir Chaudhary (PAN No. AEVPC9838D) and Anita Chaudhary as the co-applicant (PAN No.AANPC3115H) and in the column of organization, it is specifically mentioned as '<u>Sole 'Proprietorship</u>'. Sachin Chaudhary is also shown as a "Co-applicant" with his organizational status as a 'Proprietorship'. A separate form is also got filled of <u>M/s Surya Overseas</u> as a "<u>Sole Proprietorship</u>" signed by Sudhir Chaudhary. No PAN No. has been mentioned against either 'Sachin Chaudhary' or the 'Proprietary concern'. A dotted line agreement is thus signed by the "Applicants" & "Co-applicants" stamped as "Proprietor/HUF". Significantly, the "Applicants" i.e. the principal borrowers, as per the loan application form are "<u>Sudhir Chaudhary</u>" and "<u>M/s Surya Overseas</u>" whilst Anita Chaudhary and Sachin Chaudhary are co-sharers.

16. In the PAN details of applicant/borrower, details of the sole proprietor Sudhir Chaudhary alone have been mentioned and there is no separate detail of PAN No. of Hindu Undivided Family. The said aspect is further strengthened from the separate PAN details of co-applicant Anita Chaudhary.

17. The application for loan was thus submitted for and on behalf

of the Individual borrowers/sole proprietorship and not in any capacity as a Hindu Undivided Family. Had it been so, the PAN details of a Hindu Undivided Family would have been mentioned as a mark of identifying an applicant.

18. Further, as per Section 13 of the General Clauses Act, 1897, a word in the 'Singular' shall also include its 'Plural'. The said Clause is reproduced hereinafter below:-

> ***"13. Gender and number.- In all [Central Acts] and Regulations, unless there is anything repugnant in the subject or context-***
>
> ***(1) words importing the masculine gender shall be taken to include females; and***
>
> ***(2) words in the singular shall include the plural, and vice versa."***

19. Hence, merely because the bank seeks other family members as co-applicants, they shall none-the-less fall within the definition of "individual" in light of General Clauses Act. Merely because the wife and son become "Co-applicants", it would not automatically term the borrowing as one by Hindu Undivided Family, which is a separate entity for assessment and the Hindu Undivided Family never submitted an application. Sanction of a loan has to be seen in light of all the documents to derive the intent of the parties and a mere mentioning of stamp would not determine the nature of transaction if such stamp is not corroborated in legal documentation.

20. It is undisputed that as per the loan application form submitted by the petitioner, the same was for availing finance in the name of a sole

proprietorship and that his wife was co-applicant/guarantor in the said case. The wife being a co-applicant or nominee of the petitioner as per the agreement executed between the parties would not change the basic nature of an agreement executed between the parties. Merely because a co-applicant/guarantor was also a signatory to the loan application as well as to the agreement between the parties (as an additional safeguard for protecting the loan), the mere fact that the stamp affixed on the agreement also mentioned HUF along with/proprietor would not mean that the loan would be deemed to have been advanced in favour of the Hindu Undivided Family. The meaning of "/" has to be read as "either/or", hence, the interpretation of the stamp has to be in the context in which the application had been submitted. According to Collins Dictionary a slash- "/" has been defined as "a short diagonal line (/) used between two words to show that either is applicable". The reliance on Annexure R-1 by the respondent about the loan sanction letter only mentions about the loan having been sanctioned in favour of the petitioner along with his co-applicant Anita Chaudhary.

21. The attempt on the part of the respondent to draw an inference that merely because the stamp also mentioned HUF, and all the parties were co-signatory to the application as well as the loan sanction letter, hence, it must be deemed to have been advanced in favour of HUF would not be a correct argument.

22. Further, the argument of the respondents that the application before the Permanent Lok Adalat (Public Utility Services) was initially preferred through the authorised representative whereas the proprietor has come before this Court is concerned, the same is not convincing. There is

no mandate in law that only the sole proprietor could have preferred an application before the Permanent Lok Adalat (Public Utility Services) and that he could not have authorised any other representative to pursue the application under Section 22-C of the Legal Services Authorities Act, 1987. Hence, no adverse inference can be drawn only on the strength that the proprietor has come before this Court whereas the application had been preferred before the Permanent Lok Adalat (Public Utility Services), Panipat, Camp Court at Sonipat, through the authorised representative. Both the objections are, hence, unsustainable in law.

23. It is evident from a perusal of the award that the Permanent Lok Adalat (Public Utility Services), Panipat, Camp Court at Sonipat, has failed to underline that exemption from payment of foreclosure charges was floated for benefit of the individual borrowers. Any slight mischief by misreading of a stamp affixed in disection of the supporting documents would defeat the very objective behind the circular. The true nature of the applicant and its relationship and capacity as a borrower needs to be ascertained. Besides, the Permanent Lok Adalat (Public Utility Services), Panipat, Camp Court at Sonipat, was also in an error to restrictively construe the meaning of an "individual" without considering the provisions of the General Clauses Act, 1897 and without appreciating that the entity of Hindu Undivided Family was never an applicant. The failure is thus an error of law and its interpretation as well as application by the Permanent Lok Adalat (Public Utility Services).

24. In view of the above, the present civil writ petition is **allowed** and the award dated 04.04.2016 (Annexure P-7) passed by the Permanent

Lok Adalat (Public Utility Services), Panipat, Camp Court at Sonipat, is hereby set aside. The foreclosure charges to the tune of Rs.6,73,797.79 along with the processing charges to the tune of Rs.1,75,776/- charged by the respondent/ Finance Company are directed to be refunded to the petitioner along with interest @ 6% per annum from the date of filing of the application before the Permanent Lok Adalat (Public Utility Services), Panipat, Camp Court at Sonipat.

25. Let the amount be disbursed in favour of the petitioner within a period of three months from the date of receipt of certified copy of this order. In the event of failure to return the amount within the period as aforesaid, the respondent shall be liable to pay the interest @ 9% per annum thereafter and till its actual release.

(VINOD S. BHARDWAJ)
30.01.2024 **JUDGE**
Mangal Singh

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