

STATE BANK OF INDIA

v

VIJAY KUMAR

MARCH 26, 2007

[DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Constitution of India, 1950:

Art.136—Debt recovery proceedings—Compromise deed setting time schedule for making payment and default clause—Default in payment within time—Bank claiming recovery of entire decretal amount—Writ petition by respondent indicating difficulties for making payment in time—High Court accepted the stand of respondent and directed the payment of interest for default period @ 10.5% p.a.—On appeal, held, respondent had made full payment alongwith the interest for the default period ü Moreover, Appellant—bank had never indicated that settlement failed due to failure to stick to time schedule—Hence not fit case to exercise jurisdiction under Art.136.

The appellant-Bank filed recovery petition before the DRT. The matter was referred to Lok Adalat where a compromise deed was filed setting out terms of settlement. The compromise deed specified that respondent was to deposit the settlement amount by 31st March, 2004 and a failure clause setting out consequences of default in payment according to the time schedule. DRT passed an order in terms of compromise. Respondent defaulted in payment. Appellant-Bank took the view that there was non-compliance with the terms of the compromise/settlement, therefore, they were entitled to recover the entire decretal amount.

Respondent filed writ petition before High Court indicating the difficulties on account of which the payments could not be made in time. The High Court allowed the appeal and accepted the stand of the respondent that though there was some default, the entire amount had been paid by 12th July, 2004 alongwith interest of Rs.45,000/- for the defaulted period. It further held that the difficulties were genuine and the compromise should be acted upon but directed the bank to charge interest for the defaulted period @ 10.4% p.a. Hence the present appeal.

A Dismissing the appeal, the Court

HELD: 1. Normally, when there is failure of the terms of the settlement the default clause, if provided, operates. Therefore, in the peculiar features appellant-bank agreed to settle the claim taking into account various factors. It is true that the High Court has erroneously recorded that Rs.2,00,000/- has been paid within the stipulated time. The respondent had paid Rs. 45,000/- as interest for the defaulted period. Interestingly, pursuant to the direction of the High Court the appellant-bank had charged interest of Rs.29,353/-. [Paras 7 and 8] [477-G-H; 478-E]

C 2. Appellant-Bank at no point of time before the final payment was made, had indicated that settlement failed because of failure to stick to the time schedule. Above being the position, it is not a fit case where jurisdiction under Article 136 of the Constitution of India, 1950 is to be exercised.

[Paras 9 and 10] [478-F]

D CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1573 of 2007.

From the Judgment and Order dated 26.5.2006 of the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 15032/2005.

E Sanjay Kapur, Shubhra Kapur, Rajiv Kapur, and Arti Singh for the Appellant.

Rajiv K. Garg, Ashish Garg and Annam D.N. Rao for the Respondent.

The Judgment of the Court was delivered by

F DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the order passed by the Division Bench of the Punjab and Haryana High Court allowing the writ petition filed by the respondent.

G 3. The background facts which are almost undisputed are as follows:

The appellant-bank filed a recovery petition before the Debt Recovery Tribunal, Chandigarh (in short 'DRT'). The amount claimed was Rs.14,92,295.99. The decree was passed and revision petition was filed by the appellant-bank. A compromise deed was filed at the Lok Adalat setting out the different terms of settlement. The relevant term was that the respondent was to deposit 20%

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of the compromise/settlement amount within 30 days i.e on or before December 28, 2003 and the remaining amount of Rs.8,00,000/- was to be paid in equal monthly/quarterly/half yearly instalment on or before March 31, 2004. There was also a failure clause setting out the consequences of default in payment according to the time schedule. DRT passed an order in terms of the compromise. Undisputedly there was some default in payment. Since the appellant-bank took the view that there was non-compliance with the terms of the compromise/settlement, therefore, the appellant-bank was entitled to recover the entire decretal amount.

4. A writ petition was filed before the High Court indicating the difficulties on account of which the payments could not be made in time. The High Court took note of the fact though there was some default on the part of the respondent the entire amount had been paid by 12th July, 2004 along with interest of Rs.45,000/- for the defaulted period. The High Court held that the difficulties were genuine. The respondent had proved his bona fide by making the payment of whole amount as agreed to in the compromise and that also paid for the defaulted amount.

5. The High Court was of the view that the first instalment was paid in time. Therefore, it accepted the stand of the writ petitioners and held that the compromise should be acted upon but directed the bank to charge interest for the defaulted period @ 10.4% p.a.. A sum of Rs.20,000/- which was deposited pursuant to the order of the High Court was directed to be adjusted for publication charges etc.

6. In support of the appeal learned counsel for the appellant-bank submitted that the High Court has wrongly held that the first instalment was made in time. Additionally, when the amounts had not been paid according to the fixed schedule the default clause operated and the High Court could not have come to the aid of a defaulter.

7. Learned counsel for the respondent submitted that High Court took note of all the relevant factors, the bona fides of the respondent and even had directed charging of interest which in fact has been charged by the appellant bank and has been paid. Normally, when there is failure of the terms of the settlement the default clause, if provided, operates. Therefore, in the peculiar features appellant-bank agreed to settle the claim taking into account various factors. It is true that the High Court has erroneously recorded that Rs.2,00,000/- has been paid within the stipulated time. The details of the payment are as follows:

S. No.	Date of Payment	Amount	Mode of Payment
1.	28.12.2003	Rs.90,000	Cash deposited with the Respondent bank
2.	2.1.04	Rs.20,000	Cash deposited with the Respondent bank
3.	5.1.04	Rs.10,000	Cash deposited with the Respondent bank
4.	25.4.04	Rs.3,80,000	Cash deposited with the Respondent bank
5.	12.7.04	Rs.5,00,000	Vide bank draft deposited with the Recovery officer.
Total			Rs.10,00,000

8. Additionally, we find that the respondent had paid Rs.45,000/- as interest for the defaulted period. Interestingly, pursuant to the direction of the High Court the appellant-bank had charged interest of Rs.29,353/-. There into arrangements with third party for selling the property but the payment in respect of the sale was to be made directly to the bank.

9. It is noted that Bank at no point of time before the final payment was made appears to have indicated that settlement failed because of failure to stick to the time schedule.

10. Above being the position, we do not find this to be a fit case where jurisdiction under Article 136 of the Constitution of India, 1950 is to be exercised. The appeal is dismissed.

D. G.

Appeal dismissed.