

CASE NO.:
Appeal (civil) 1573 of 2007

PETITIONER:
State Bank of India

RESPONDENT:
Vijay Kumar

DATE OF JUDGMENT: 26/03/2007

BENCH:
Dr. Arijit Pasayat & Lokeshwar Singh Panta

JUDGMENT:
JUDGMENT

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.

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% 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	Amount Payment	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.