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State Bank of Patiala v. Permanent Lok Adalat (PUS) Rewari , 2017 PLRonline 0302

PUNJAB AND HARYANA HIGH COURT

Before : Justice M.M.S. Bedi, J.

State Bank of Patiala – Petitioner

Versus

Permanent Lok Adalat (PUS) Rewari and others – Respondents

CWP 6048 of 2017.

23.5.2017 .

Banking - Loan agreement - [Contract](#) - Handwritten terms - Hand-written lines in clause 10 of the Letter of arrangement incorporated entitling to take over charges - Documents in the original agreement never contained the same in clause 10 of the general terms and conditions - The documents which were supplied by Bank at the time of renewal and the documents downloaded from e-mail, did not contain the above said condition - On account of absence of any hand-written point in clause 10 of the general terms and conditions which was supplied by the petitioner Bank at the time of renewal, Bank held not liable to recover pre-payment charges/ take over charges - Held, Condition for recovery of charge @ 4.25% has been illegally incorporated in the agreement.

For the Petitioner:- Mr. A.K. Ahuja, Advocate.

JUDGMENT

Mr. M.M.S. Bedi, J. – State Bank of Patiala has filed the present writ petition seeking to quash order dated December 27, 2016 (annexure P-12) passed by Permanent Lok Adalat (PUS), Rewari, against the petitioner Bank holding that respondent No.2 will be liable to make payment of take over charges raised by the petitioner and directed the petitioner to release mortgaged security after recovering the outstanding balance other than take-over charges.

2. Brief facts relevant for the decision of the present writ petition, as apparent from the record, are that respondent no.2 is carrying on the business of milling, manufacturing and production of edible oils in the name and style of M/s Balaji Oil and General Mills in Rajasthan. It had availed credit facility from the petitioner Bank comprised of Cash Credit Hypothecation Limit of Rs. 1.50 crores since August 16, 2012. Respondent No.2 applied for the renewal of the Cash Credit Limit vide application dated September 21, 2015. The said limit was renewed vide letter of arrangement dated January 22, 2016 for a period of 12 months and the same was required to be repaid as per the repayment schedule mentioned in the terms and conditions with the sanction letter of Cash Credit Limit. The total Cash Credit Limit was Rs. 3 crores. Respondent No.2 claimed that she was forced to transfer the cash credit limit to HDFC Bank where the rate of interest is 10% per annum which is lesser than the rate of interest charged by the petitioner Bank. A request was made for closure of the cash credit limit and release the property documents given as security with the petitioner Bank. The petitioner Bank wrote a letter dated April 13, 2016 that for closure of the cash credit limit and release of the property documents, certain payments were to be made as mentioned in the letter dated April 13, 2016. Respondent No.2 vide her letter dated April 15, 2016 replied that the amount having already been deposited, no pre-payment charge is applicable as such request for release of the property documents provided as security was reiterated. The petitioner failed to release the property documents of respondent No.2 for want of payment to be made by respondent No.2 to the petitioner.

3. The Permanent Lok Adalat held that respondents No.2 and 3 shall not be liable to make payment of pre-payment charges/ takeover charges levied by the petitioner Bank. A direction was issued to the Bank to release the property documents of security having been kept by respondents No.2 and 3 in the custody of the Bank after recovering the charges, if any, (outstanding as balance), other than the pre-payment charges / takeover charges @

4.25% against respondents No.2 and 3 within 30 days from the date of passing of the award.

4. Aggrieved by the direction of the Permanent Lok Adalat in restraining the petitioner from recovering the pre-payment/ take over charges, the bank has filed the present writ petition.

5. The main contention of learned counsel for the petitioner is that the petitioner Bank is entitled to pre-payment charges at the rate of 4.25% of the over-standing amount from Respondent No.2 on account of taking over loan/ cash credit limit by HDFC Bank as per letter of arrangement and clause 30 of the Monetary Policy 2014-2015 of the Reserve Bank of India relates only to levy of penalty of pre-payment of Term Loans attracting floating rate of interest and saving Bank accounts and not applicable to the case of respondent No.2 to whom working capital by way of Cash Credit Limit was allowed by the petitioner Bank in the name of her sole proprietorship concern, respondent No.3.

6. A perusal of the impugned order indicates that the letter of arrangement Ex.R7 -B dated January 22, 2016 has been carefully perused by the Permanent Lok Adalat which has observed that by the hand-written lines in clause 10, it has been incorporated that the petitioner Bank will be entitled to take over charges @ 4.25% on the total loan amount whereas documents in the original agreement never contained the said plea in clause 10 of the general terms and conditions. The documents which were supplied by petitioner Bank at the time of renewal and the documents downloaded from e-mail, did not contain the above said condition. On account of absence of any hand-written point in clause 10 of the general terms and conditions which was supplied by the petitioner Bank at the time of renewal Ex.P-1 and Ex.P-7, the petitioner Bank was held not liable to recover pre-payment charges/ take over charges @ 4.25%.

7. With the assistance of learned counsel for the petitioner I have gone through the Master Circular on Customer Service in Banks, issued by Reserve Bank of India. There is a specific provision made in the said circular in para 6 which deals with levy of service charges. Para 6.1 of the circular reads as follows:-

“6.1 Fixing service charges by banks

The practice of IBA fixing the benchmark service charges on behalf of member banks has been done away with and the decision to prescribe service charges has been left to individual banks. While fixing service charges for various types of services like charges for cheque collection, etc., banks should ensure that the charges are reasonable and are not out of line with the average cost of providing these services. Banks should also take care to ensure that customers with low volume of activities are not penalised.

Banks should make arrangements for working out charges with prior approval of their Boards of Directors as recommended above and operationalise them in their branches as early as possible.”

8. As per para 6.4 of the Circular, which deals with levy of foreclosure charges/ pre-payment penalty on floating rate term loans, it has been laid that banks will not be permitted to charge foreclosure charges/ prepayment penalties on all floating rate term loans sanctioned to individual borrowers. In para 6.6 of the Circular, an advice has been given to the bank to follow a uniform, fair and transparent pricing policy and not discriminate between their customers at home branch and non-home branches.

9. In view of the above said circumstances, this Court is of the opinion that the petitioner Bank is not entitled to any recovery of take-over charges as the entire amount due had already been paid to the petitioner and that the condition for recovery of charge @ 4.25% has been illegally incorporated in the agreement. No ground is made out to interfere in the order passed by respondent No.1.

10. The petition is dismissed. The petitioner Bank is directed to comply with the directions of the Permanent Lok Adalat within a period of one month after the receipt of certified copy of the order.