

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDI GARH

CA-CWP No. 9 of 2017 in CWP-COM-77-2017 (O&M)
DATE OF DECISION: 30.05.2017

Allahabad Bank

.... Appellant

versus

Gold Field Shiksha Sanstha and others

..... Respondents

CORAM: - HON'BLE MR. JUSTICE S. J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. R. S. Manhas, Advocate for the appellant
Mr. Aditya Jain and Ms. Palak Dev, Advocate for
respondent No. 1
Mr. Vikas Bahl, Senior Advocate with
Mr. Bani and Mr. Keshav Pratap Singh, Advocates
for respondent No. 7

S. J. VAZIFDAR, CHIEF JUSTICE (Oral):

This is an appeal against the order of the learned single Judge directing status-quo regarding the running of the school to be maintained till the next date of hearing of the writ petition.

2. We could have left it to the learned single Judge to finally dispose of the writ petition. However, in view of the facts and circumstances of the case, we find that the writ petition itself does not survive. There was no question, therefore, of granting the order.

3. The first respondent is a customer of the appellant i.e. the petitioner before the learned single Judge. The appellant was

respondent No. 3 to the petition. The appellant had advanced various credit facilities to the first respondent in respect whereof, according to the appellant, an amount of about Rs. 14.60 crores is due and payable. A notice dated 08.04.2016 was served by the appellant on the first respondent under section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. There was no reply to the notice. Accordingly, on 08.06.2016, the appellant served a notice under section 13(4) of the Act. The notice called upon the first respondent to hand over possession of the secured assets and stated that if the petitioner failed to do so it would take possession thereof on 15.06.2016 as per law as well as take further action.

4. The first respondent challenged this action of the appellant by filing an appeal under section 17 of the Act on 28.07.2016. On 29.09.2016, the Debts Recovery Tribunal (DRT) rejected the first respondent's application for interim stay against dispossession. The Learned Judge observed that "the Bank is directed to go ahead with the proceeding but taking care that academic atmosphere should not be disturbed and not even a single day study of the students should be disrupted." The authorised officer was granted liberty to take the help of the Education Department for change in the management or any other steps taking into consideration the future of the students who are at no fault.

The petitioner challenged this order by filing CWP-COM-23 of 2016 which was disposed of by an order dated 22.11.2016 relegating the first respondent to the alternate remedy of filing an appeal under section 18 of the Act.

5. On 29.11.2016, the appellant issued an auction notice. The details of the immovable property included a running school in the name of the first respondent and the particulars of the property where the school is being run were mentioned. On 13.12.2016, an auction was held at which respondent No.6 was declared to be the successful bidder. The bid has been accepted. A sale certificate has also been issued. Respondent No.6 claims to have expended large amounts in respect of the property including discharging certain liabilities of respondent No.1.

6. On 06.12.2016, the first respondent filed an appeal before the Debts Recovery Appellate Tribunal (DRAT) against the said interim order dated 29.09.2016. This appeal was dismissed on 06.01.2017 on account of the first respondent not having made the pre-deposit of 25% of the amount claimed.

7. What is important to note is that this writ petition challenges the interim order dated 29.09.2016 of the DRT and the order dated 06.01.2017 of the DRAT dismissing the appeal against that order. These were only interlocutory orders. They have now come to an end by virtue of the fact that the first respondent's Securitization Application (SA) under section 17 was itself finally dismissed on 30.03.2017. In other words, the interim order dated 29.09.2016, in any event, cannot survive. Consequently, even if the appeal against that order was on the file of the DRAT it would cease to survive on account of the main proceedings, namely, the SA having been dismissed. This, in turn, would render this writ petition itself infructuous.

8. These facts were pointed out to the Learned Judge during the hearing. The first respondent's remedy, if any, is to challenge

the order dated 30.03.2017 by filing an appeal before the DRAT under section 18 of the Act.

The Learned Judge despite the above circumstances, inter alia, observed as under: -

"In the meanwhile, an interim direction is issued that in case the petitioner-Society deposits 10% of the amount due within 20 days as mentioned in the notice under Section 32 of the SARFAESI Act, the appeal will be taken up by the Debt Recovery Appellate Tribunal, Delhi, expeditiously subject to the final decision of the present petition.

It is observed that in case the petitioner-Society files any appeal against the said order dated 30.03.2017, the benefit of interim order passed by this Court would not be applicable.

As the present order has been passed taking into consideration the larger interest of the students of the school, who are receiving education being an institution run by the petitioner-Society, status quo regarding running of the school will be maintained, till the next date of hearing only."

9. The reference to section 32 is only a typographical error for section 13(2). Firstly, it is difficult to understand the basis on which the Learned Judge permitted the appeal filed by the first respondent to be heard upon the first respondent depositing only 10% although section 18 specifically requires a deposit of 25% and that too as an interim measure. In any event, as we mentioned earlier, that appeal against the order dated 29.09.2016 cannot survive in view of the SA itself having been dismissed.

10. The second sub-paragraph, quoted above, observes that in case the first respondent files an appeal against the final order dated 30.03.2017, the benefit of the interim order passed by the Learned Judge would not be applicable. That would be unfair to the other party for it would mean that if the first respondent does not file any appeal against that order, it would have the benefit of the continuance of the operation of the impugned order.

11. We appreciate the anxiety shown by the Learned Judge in the last sub-paragraph quoted above. Indeed, the students would be the innocent victims if their studies were to be discontinued. Respondent No.6 i.e. the auction purchaser itself runs educational institutions and has given an undertaking to this Court that there would be no disruption of the courses pursued by any of the students in any manner whatsoever. That undertaking is accepted.

12. In the circumstances, the impugned order is set aside and the appeal is disposed of in the above terms. To reiterate, the writ petition does not survive on account of the SA itself having been dismissed on 30.03.2017. The remedy of the first respondent is to challenge the order before the DRAT under section 18 of the Act. Any application for interim relief(s) can also be made before the DRAT. Only as a matter of indulgence and without reflecting upon the merits of the matter in any manner whatsoever and to enable the first respondent to approach the DRAT, respondent No.6 is directed not to take over the management till 15.06.2017. Any application for interim orders or extension of this order shall be made only before the DRAT and not before this Court.

In the meantime, however, the first respondents shall not dispose of, alienate, encumber or part with possession of any of their assets movable or immovable. The Learned counsel appearing on behalf of the first respondent states that no admissions are to be granted for at least two weeks and no money is to be collected for any admissions either.

The first respondent is always at liberty to obtain any offers for the sale of any properties other than those auctioned in favour of respondent No.6 and to submit the same to the appellant-bank for consideration.

If an appeal is filed by the first respondent before the DRAT, the first respondent shall also give the details of all the fees collected for the current/next academic year in respect of the existing students as well and in respect of any new students. Even if an appeal is not filed, the details thereof shall be furnished on affidavit to be filed in this Court with copies thereof to the other party latest by 15.07.2017.

(S. J. VAZIFDAR)
CHIEF JUSTICE

(ANUPINDER SINGH GREWAL)
JUDGE

30.05.2017
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NOTE:

Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO