

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.7119 OF 2009
(Arising out of S.L.P. (C) No.6613 of 2007)

Punjab Financial Corporation & Anr. ...Appellant(s)

Versus

M/s. Garg Steel & Anr. ...Respondent(s)

O R D E R

Heard learned counsel on both sides.

Leave granted.

By consent, matter taken up for final hearing and disposed of.

This appeal has been filed by Punjab Financial Corporation against the judgement and order dated 22nd February, 2007, delivered by the Division Bench of the Punjab and Haryana High Court in the case of M/s. Garg Steel vs. Punjab Financial Corporation & Ors. [C.W.P. No.14882 of 2003].

The facts giving rise to this appeal are as follows:

Respondent No.1 herein ['Borrower', for short] instituted Writ Petition No.14882 of 2003 in the High Court by which it prayed for writ of mandamus directing Punjab Financial Corporation [for short, "P.F.C."] to release the balance loan amount immediately in terms of ...2/-

the contract. In the writ petition filed before the High Court, the said Borrower also prayed for damages with interest on the ground of breach of contract by not disbursing the loan(s). The Borrower further prayed that the interest due from it on the outstanding(s) be also waived. According to the said Borrower, it had made investments on its venture on the basis of the contract under which P.F.C. had agreed to sanction and disburse the loan to enable it to set up its Project and on account of failure to disburse further amounts, it has suffered huge losses for which damages were sought.

This Court had issued notice to Respondent No.1 at the admission stage as this Court was, prima facie, of the view that writ petition filed in the High Court was misconceived. Accordingly, we heard the parties at length on the averments made in the original writ petition. On going through the writ petition, the following circumstances are alleged: That a loan application was made for an amount of Rupees thirty lakhs, including Soft loan, which was accepted by P.F.C.; that Rs.21.25 lakhs was agreed to be disbursed in advance against collateral security of commercial plots and residential plot; that the loan was granted at the contractual rate of interest at 15.5 per cent; that the loan consisted of the Term loan and the Soft loan; and that there was a back-to-back re-finance arrangement between P.F.C. and Small Industries Development Bank of India [Respondent No.2 in the original writ petition] in respect of the Soft loan. This last circumstance of back-to-back re-finance arrangement is important, particularly in view of the fact that by this

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writ petition, the Borrower is, in effect, seeking, indirectly, enforcement of the said back-to-back transaction between P.F.C. and S.I.D.B.I. Further, there was no privity of contract between the Borrower and S.I.D.B.I. Lastly, the point to be noted is that, as on the date of the filing of the original writ petition, Respondent No.1 was a Debtor to P.F.C.. It also appears from the averments in the original writ petition that P.F.C. had also insisted on execution of documents by the said Borrower in respect of further disbursements of the Term loan which the Borrower refused.

Time has come when this Court needs to emphasise that in cases where writ of mandamus is sought, High Courts should be very particular in finding out from the averments of the writ petition whether there exist proper pleadings. In the present case, arguments are advanced on the basis of promissory estoppel, waiver and breach of contract without proper averments being made in the writ petition. Be that as it may, the facts indicate that, by this writ petition, the original petitioner [Borrower] has sought damages and enforcement of contractual commitments which, in our view, were beyond the scope of a writ petition. Adjustment of accounts and enforcement of back-to-back transactions with a party with whom there was no privity of contract coupled with the claim for damages are all contractual matters un-enforceable by way of writ petitions.

For the afore-stated reasons, we are of the view that the High Court should not have entertained the writ petition, particularly when contractual disputes requiring evidence existed between the Borrower and Lender.

Before concluding, we may state that learned counsel for Respondent No.1 placed reliance on the judgement of this Court in the case of Gujarat State Financial Corporation vs. M/s. Lotus Hotels Private Limited, reported in 1983 [3] S.C.C. 379, which has no application to the facts of this case. At the outset, it may be stated that, in the present case, it was agreed by and between P.F.C. and the Borrower that Soft loan would be disbursed by P.F.C. only if S.I.D.B.I. releases the amount under the re-finance arrangement between P.F.C. and S.I.D.B.I. In the original writ petition, there is no prayer for specific performance of the re-finance agreement, assuming for the sake of argument that such a plea is tenable.

For the afore-stated reasons, we set aside the impugned judgement of the High Court on the ground that the writ petition instituted by the borrower was misconceived.

Accordingly, civil appeal stands allowed with no order as to costs.

JUDGMENT.....J.
[S.H. KAPADIA]

.....J.
[G.S. SINGHVI]

.....J.
[AFTAB ALAM]

New Delhi,
October 22, 2009.