

RAJASTHAN HIGH COURT

Rajasthan Poly Pack Laminators (P) Ltd.

Vs.

Rajasthan State Financial Corpn.

Civ. Spl. Appeal (Writ) No. 73 of 1999
(Mrs. Gyan Sudha Misra and J.R. Goyal, JJ.)

19.11.2005

JUDGEMENT

Mrs. Gyan Sudha Misra and J. R. Goyal, JJ.

1. This appeal has been preferred against the judgment and order of the learned single Judge passed in S. B. Civil Writ Petition No. 5164/98, which had been filed by the appellant petitioner M/s. Rajasthan Poly Pack Laminators (P) Ltd., for a direction to the respondent-Rajasthan State Financial Corporation (R.F.C. for short) to grant him the benefit of a scheme floated by the RFC known as "One line Settlement Scheme" which was meant for settling the manner in which the debtor could pay-off his debt in a convenient manner and in easy installments.

2. The petitioner-appellant came up with a case that the respondent R.F.C. had been floating several schemes by way of "Onetime Settlement Scheme" for settling the amount of loan which is disbursed to the companies or individuals and if the entire amount was not realized as per the agreement between the parties, the same could be settled by way of "One line Settlement". The learned single Judge dismissed the writ petition essentially on the ground that disputed questions of fact had been raised by the petitioner-appellant herein, which was to the effect that as per the petitioner's case only a sum of Rs. 12,000/- was payable by the appellant-company to the RFC and the amount asserted by the RFC, which was more than two lac rupees, was not payable by the appellant company but the amount might have been outstanding against one Bhanwar Lal, who although was the Director of the company, might have taken the loan for his personal use and not for the company. The case of the respondent RFC, however, was to the effect that the amount of Rs. 2,65,358/- had been disbursed to Bhanwar Lal as Director of the company and not in his individual capacity and,

therefore, the amount was payable by the company to the RFC. It is thus obvious that there was an *inter se* dispute regarding the amount of loan having been advanced to the company through its Director Bhanwar Lal but the company asserted by the amount had been disbursed to Bhanwar Lal in his individual capacity. Thus RFC asserted that the amount of loan was advanced to Bhanwar Lal not in his personal capacity but as the Director of the company. It was in these circumstances that the benefit of the Scheme of "One line Settlement" was not allowed to be availed of by the appellant-company. It further transpired that the appellant-company had been sold of way back in the year 1955 by the RFC to a third party. Thus the basic dispute as to whether the amount was at all payable by the company or by Bhanwar Lal, in his individual capacity, could not have been decided in the scheme while granting the benefit of "Onetime Settlement".

The "Onetime Settlement Scheme" in fact envisaged as follows:-

"Scheme No. 2 : For Settlement of account for loans sanctioned above Rs. 50,000/- falling in loss/doubtful categories.

(A) ELIGIBILITY:

I. The Scheme will be applicable to accounts falling in Doubtful 'A' and 'B' and Loss category as shown in the books of Corporation as on 31-3-98. In Loss Category following types of cases also will be covered :

a) Deficit cases.

b) Cases where promoters/assets not available.

c) Units in possession exceeding 3 years and auctioned for more than 5 times.

II. Though these will not be essential criteria, the MRV of the unit, the extent and nature of the security and previous 12 months production of the unit will also be brought to the notice of the Committee for settling the request on merit from case-to-case basis.

(B) QUANTUM OF RELIEF :

i) The maximum relief in this scheme No. 2 will be up to the interest including penal interest outstanding as on 1st April, 1998.

ii) For Doubtful 'A' Category, the account will be recast at the refinance plus 1% rate of interest with compounding effect. The rest interest amount will be waived, but the account will not be settled below the principal amount outstanding as on 1-4-98 plus other money up to date, if any.

iii) For Doubtful 'B' Category, the account will be recast at simple refinance plus 1% rate of interest. The rest of amount, except other money, will be waived

but account will not be settled below the principal amount outstanding as on 1-4-98 plus other money up to date, if any.

iv) For Loss Category, the accounts will be settled on principal amount outstanding as on 1st April, 1998.

v) The amount deposited by the loanee after 1st April, 1998 will be credited against the principal in this scheme."

3. The appellant company, who was interested in availing the benefit of "Onetime Settlement Scheme", obviously had to fulfill the criteria laid down therein but even assuming that one of the criterion as per the "Onetime Settlement Scheme" was fulfilled by the appellant-company, inasmuch as the company had not been sold to a third party and possession of this company had not been taken by the RFC although it had been put to sale, the fact remains that the basic dispute first of all had to be resolved as to whether the amount disbursed by way of loan to Bhanwar Lal could be attributed as loan having been taken by the company or it had been disbursed to Bhanwar Lal for his personal use. It hardly needs an extraordinary legal acumen to understand that the "Onetime Settlement Scheme" is meant to facilitate the repayment by granting some concession to the debtor regarding the mode and manner of payment as also calculation of the interest amount and that would envisage that the amount advanced to the debtor has to be first of all owned by it; but in a situation of the instant nature where the company completely disowns this amount having been paid to it, the benefit of "Onetime Settlement Scheme" obviously is not meant to cater to such situation.

4. When the facts of the instant matter is examined it is quite on the surface as already indicated hereinbefore that the company is disowning the amount of loan outstanding to the Corporation as the appellant-company disowns the amount which had been taken by its Director by setting up a plea that the then Director of the Company Bhanwar Lal, has taken the amount in his personal capacity. Unless this disputed question of fact, which is of vital nature, could be resolved by a Court of competent jurisdiction, obviously the plea of the petitioner-company that it should have been granted the liberty to avail the benefit of the scheme could not have been decided. The learned single Judge, in our view therefore, was quite justified in holding that there are disputed questions of fact to the extent as to whether the outstanding amount of loan was payable by the company or not and the company disowning this amount by way of debt, obviously could not have been allowed to claim benefit of the scheme until

the basic to controversy was resolved. In these circumstances, the learned single Judge has rightly held that the benefit of "Onetime Settlement Scheme" could not have been allowed to the petitioner when his case gave rise to disputed questions of fact before it could insist to take the benefit of the scheme for the settlement. The appeal under the circumstances has no force and hence it stands dismissed.

Appeal dismissed.