

PUNJAB FINANCIAL CORPORATION

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v.

M/S PAULBRO LEATHERS PVT. LTD.

(Civil Appeal Nos. 118-119 of 2019)

JANUARY 07, 2019

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**[ABHAY MANOHAR SAPRE AND
R. SUBHASH REDDY, JJ.]**

Settlement – One Time Settlement (OTS) – Respondent defaulted in repaying the loan taken from appellant-Corporation – In terms of OTS policy, matter was referred to Chartered Accountant to determine the remaining outstanding balance amount payable by the respondent to the appellant-Corporation – Dispute arose even after the settlement as to the liability determined and worked out by the Chartered Accountant – Demand of Rs.49 lacs raised on the respondent – Respondent filed writ petition before the High Court, which was allowed on the ground that since the whole issue was settled with consent and no objection was raised by the appellant at any point of time, the issue cannot be allowed to be re-opened – On appeal, held: The parties only agreed to settle the dispute in terms of OTS policy of the appellant-Corporation and, therefore, one Chartered Accountant was appointed by the Court to go into the question and submit his report – The dispute which arose out of the terms of the settlement was new dispute and it had to be settled on its own merits in accordance with law – It was necessary for the High Court to record a categorical finding on the issue as to how and on what basis the respondent had complied with the terms of settlement and had thus discharged its entire liability – It was not done – Matter remitted to High Court for consideration afresh – Bank/Banking.

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Allowing the appeals and remitting the matter to High Court, the Court

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HELD: If there was some dispute or ambiguity or clarification needed in the report of the Chartered Accountant with a view to decide the actual liability of the respondent and how much amount was paid by the respondent to the appellant

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A against the said settlement; and the manner in which the liability was worked out because the Corporation was saying one thing and the respondent was saying other, then the issue could still be referred to any other Chartered Accountant of repute. It is for this reason that this was a new dispute, which had arisen out of the terms of the settlement, and it had to be settled on its own merits in accordance with law. The issue, which was raised by the appellant by raising a demand, was, therefore, required to be examined on its merits before quashing the huge demand which was raised by the appellant against the respondent. [Paras 16-18][86-E-G]

C CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 118-119 of 2019.

D From the Judgment and Order dated 14.11.2014 of the High Court of Punjab and Haryana at Chandigarh in CM No. 12188-CWP-2014 (O&M) in CWP No.15042 of 2003 and order dated 01.08.2013 in CWP No. 15042 of 2003 (O&M).

T. S. Deobia, Sr. Adv., Saksham Maheshwari, Jagjit Singh Chhabra, Advs. for the Appellant.

E A. R. Takkar, Ajay Bansal, Md. Rashid Saeed, Advs. for the Respondent.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. Leave granted.

F 2. These appeals are directed against the final judgment and order dated 14.11.2014 passed by the High Court of Punjab & Haryana at Chandigarh in CM No.12188/2014 in C.W.P. No.15042/2003 and final order dated 01.08.2013 in CWP No.15042/2003(O&M).

3. Few facts need mention *infra* for the disposal of these appeals that involve a short issue.

G 4. The respondent had taken some loan from the appellant-Punjab Financial Corporation (hereinafter referred to as “the Corporation”) for their business. It is not in dispute that the respondent failed to re-pay the loan in terms of the loan agreement and thus became a defaulter.

H 5. The matter was accordingly settled in terms of one time settlement policy of the appellant- Corporation on 01.04.2003. It is also

not in dispute that while settling the dispute, by the order of the High Court dated 27.04.2006, the matter was referred to the Chartered Accountant-Davinder S. Jaaj to determine the remaining outstanding balance amount payable by the respondent against their loan account to the appellant-Corporation and submit a report. It is Annexure-P-5. A

6. Since the dispute arose even after settlement between the parties as to what is the actual and precise liability determined and was eventually worked out between the parties in the settlement and against the determined liability, how much amount the respondent has paid, the appellant, as per their calculation, raised a demand of Rs.49,86,713/- (Annexure-P-11 to the writ petition) on the respondent and called upon them to pay the said amount. The respondent, however, denied their liability. B C

7. It is this demand, which gave rise to filing of the writ petition by the respondent in the High Court against the appellant out of which these appeals arise and sought its quashing. The appellant contested the writ petition. D

8. The High Court, by impugned order dated 01.08.2013, allowed the writ petition holding that since the parties had consented to the settlement and pursuant thereto the entire exercise was carried out for working out the liability, the appellant was not justified in raising the demand in question on the respondent. E

9. The appellant felt aggrieved and filed an application for review of the order dated 01.08.2013 but the same was also dismissed by order 14.11.2014 on the ground that since the appellant - Corporation did not raise any objection before the appointed Chartered Accountant and nor to the respondent and hence at such belated stage, they are not permitted to raise any objection on such question and nor to raise any demand. F

10. It is against these two orders, the appellant - Corporation felt aggrieved and filed the present appeals by way of special leave in this Court. G

11. The questions, which arise for consideration in these appeals, are whether the High Court was justified in allowing the respondent's writ petition and was, in consequence, justified in quashing the demand (Annexure-P-11 to the writ petition) raised by the appellant on the H

A respondent; and second, whether the High Court was justified in dismissing the application for review filed by the appellant against the order allowing the respondents writ petition.

12. Heard learned counsel for the parties.

B 13. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeals and remand the case to the High Court for deciding the writ petition afresh on merits in accordance with law.

C 14. The need to remand the case to the High Court has occasioned because we find that the High Court essentially proceeded to allow the writ petition on the ground that since the whole issue was settled with consent and no objection was raised by the appellant at any point of time, the issue now can not be allowed to be re-opened at this stage.

15. We do not agree with this reasoning of the High Court for more than one reason.

D 16. First, parties only agreed to settle the dispute in terms of one time settlement policy of the appellant-Corporation and, therefore, one Chartered Accountant was appointed by the Court to go into the question and submit his report.

E 17. Second, if there was some dispute or ambiguity or clarification needed in the report of the Chartered Accountant with a view to decide the actual liability of the respondent and how much amount was paid by the respondent to the appellant against the said settlement; and lastly, the manner in which the liability was worked out because the Corporation was saying one thing and the respondent was saying other, then the issue could still be referred to any other Chartered Accountant of repute. It is for the reason that this was the new dispute, which had arisen out of the terms of the settlement, and hence it had to be settled on its own merits in accordance with law.

G 18. The issue, which was raised by the appellant by raising a demand, was, therefore, required to be examined on its merits before quashing the huge demand which was raised by the appellant against the respondent. In other words, it was necessary for the High Court to record a categorical finding on the issue as to how and on what basis the respondent has complied with the terms of settlement and has thus discharged its entire liability. It was not done.

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19. We accordingly allow the appeals, set aside both the orders A
passed by the High Court, restore the writ petition to its original number
and request the High Court to decide the writ petition filed by the
respondent afresh on merits in accordance with law.

20. Since the issue involved public money, the High Court is
requested to decide the writ petition as expeditiously as possible preferably B
within a period of six months.

Devika Gujral

Appeals allowed.