

Babusha International Vs. Canara Bank

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Court : Delhi

Decided On : May-19-2008

Reported in : AIR2008Delhi185; 151(2008)DLT560; 2008(105)DRJ497

Judge : S. Ravindra Bhat, J.

Acts : [Banking Regulation Act, 1949](#) - Sections 21 and 35; Companies Act; [Constitution of India](#) - Articles 14 and 226

Appeal No. : Writ Petition (Civil) No. 3881 of 1996

Appellant : Babusha International

Respondent : Canara Bank

Advocate for Def. : Sanjay Batra and ; Y.P. Narula, Sr. Adv., ; Gautam Narula

Advocate for Pet/Ap. : H.L. Tiku, Sr. Adv.,; Yashmeet,; Thakur Sumit and;

Disposition : Petition dismissed

Judgement :

S. Ravindra Bhat, J.

1. In these proceedings, under Article 226 of the [Constitution of India](#), the petitioner, a sole proprietary concern of Shri Virender Khullar, challenges a letter dated 25th August, 2005 (hereafter 'the impugned letter') written by the respondent

Canara Bank (hereafter 'the bank') withdrawing the One Time Settlement (OTS) in respect of its (the petitioner's) liabilities.

2. The facts necessary to decide the case are the petitioner borrowed amounts from the respondent Canara Bank in February, 1997. The total limit sanctioned was Rs. 1.7 crores. These were commercial advances. The advances were secured through collateral security, by mortgaging property bearing No KP-124, HSIDC, Industrial Area, Kundli Tehsil, District Sonapat, Haryana. The petitioner was unable to repay the amounts in time and incurred a liability to the extent of Rs. 1.31 crores. The Bank filed an application for recovery of that amount with interest before the Debts Recovery Tribunal, (DRT) New Delhi, on 4.6.1999. The application was decreed by the DRT on 15.10.2003 and a recovery certificate for the sum of Rs. 1,34,75,360/80 was issued against the petitioner. The Bank instituted recovery proceedings being RC 154/2003 before the Recovery Officer.

3. The petitioner wrote to the Bank on 19.8.2004 and offered, without prejudice to settle its liabilities in terms of Reserve Bank of India (RBI) Circulars, under a One Time Settlement Scheme. The Bank conveyed its acceptance, through its letter dated 10.12.2004 whereby the petitioner had to pay the entire amount of Rs. 85 lakhs on or before 31.12.2004. The petitioner was further informed that a sum of Rs. 1.5 lakhs kept in a 'No Lien Account' with the Bank was adjusted towards the OTS.

4. The petitioner conveyed willingness to abide by the One Time Settlement Scheme offer (hereafter 'the OTS' or 'the offer') on 19.12.2004 and informed its inability to pay the entire amount within the time indicated; it requested for about five months time to pay the entire amount. The petitioner also sought time to sell its property. The petitioner paid a further amount of Rs. 2,50,000/- on 22.12.2004 when a joint application for recording terms of the compromise was moved before the Recovery Officer. The Bank wrote to the petitioner on 11.5.2005, stating that no more time would be granted. The petitioner again requested for further extension; the Bank agreed to this and granted time till 30.6.2005 to fulfill its commitment in accordance with the OTS. At the petitioner's request, again, time was extended to 31.8.2005 for depositing the entire amount.

5. On 18.8.2005, the Bank informed the petitioner that one Dinesh Lakra had written to it alleging irregularities while availing limits for working capital requirements at Bank's Rajouri Garden Branch and that he had concealed that the property at B-4/40, Paschim Vihar was owned as a Power of Attorney holder. It was also alleged in the letter that Shri Virender Khuller, the petitioner's proprietor was owner of a portion of property known as Shalimar Cold Storage, B-50, Lawrence Road, Delhi. The petitioner wrote to the Bank on 19.8.2005, requesting for details. On 25.8.2005, the Bank issued the impugned letter withdrawing the One Time Settlement offer which had been extended upon 31.8.2005.

6. The petitioner contends that the Bank's withdrawal of the OTS is arbitrary and that the principle of promissory estoppel would prevent it from going back on the agreement to accept the offer and settle the entire dues for Rs. 85 lakhs. It is alleged that the Bank's intention to close the matter is evident from the joint application moved before the Debts Recovery Tribunal in December, 2004 pursuant to the letter dated 19.12.2004 communicating acceptance of the petitioner's offer to settle for Rs. 85 lakhs. The Bank, on adjusting Rs. 1.5 lakhs kept in the No Lien Account concluded the contract. In the circumstances, it had to proceed and could not have unilaterally withdrawn from the agreement.

7. It is also averred that the impugned letter is arbitrary since it is based on illusory grounds. In this regard, it is alleged that assuming the Bank could resile from the agreement, the power could be exercised only for relevant reasons and germane grounds, and not fancifully for extraneous reasons. It is urged that the Bank has also violated principles of natural justice in not granting any opportunity to petitioner to represent against the impugned letter or the proposed withdrawal of its offer.

8. The Bank, in support of its action, alleges that the petitioner is a willful defaulter. It alleges that an OTS offer was made on 18.2.2003 and till date of filing of the writ petition, it made no attempt to fulfill its promise or pay the entire amounts. In terms of the letter, the petitioner had offered to pay the entire amount of Rs. 85 lakhs within six months. The Bank had indicated that the offer was acceptable if the amounts were to be paid within three months and required Shri Virender Khuller,

to file an affidavit declaring his present networth as well as networth of his wife, Smt. Asha Khuller. It relies upon the affidavit dated 24.5.2004 furnished in which Shri Khuller stated that House No. B-4/40, Paschim Vihar (where he was residing) was owned by one Shri Harmohinder Singh and Smt. Premjeet Kaur. He further claimed that Smt. Anita Khullar, his wife and Smt. Neena Khullar, were appointed as care takers of the property and enclosed the affidavit of Shri Harmohinder Singh and Smt. Premjeet Kaur, in support. It was also deposed that the property at A-31, Nariana Industrial Area, Phase-II, New Delhi, belonged Shri Virumal, Shri Ram Chand and Shri Wadhupal, and was used to carry on the petitioner's business in terms of the agreement dated 1.11.1980. It was also stated that the property bearing No. Killa No. 83/20&84/16, Kundli Village, was acquired by the Government of Haryana and that the petitioner had not been paid any compensation.

9. The Bank contends that petitioner suppressed the material facts from it as well as this Court while entering into the OTS since it represented to be owner holding only mortgaged property. It alleges that at the time of securing advances, Shri Virender Khullar had declared to be owner of mortgaged property site worth Rs. 85 lakhs and land in Sohna worth Rs. 88 lakhs and 25% share in the commercial building in B-50, Lawrence Road, Delhi. It is, therefore, stated that Shri Khullar filed a false affidavit in the recovery proceedings stating that the property in Lawrence Road site did not belong to him.

10. The Bank also claims that RBI Guidelines are not mandatory. It avers that at the time of issuance of sale proclamation on 2.9.2005, a sum of Rs. 1,94,19,668.56 (Rupees One Crore Ninety Four Lacs Nineteen Thousand Six Hundred Sixty Eight And Paise Fifty Six Only) with interest from 4.12.2003 was due and payable. The Bank also states that the petitioner was informed about the complaint received by it and also communicated about the contents. The petitioners, it is contended, have no cause to express indignation since they were aware about ownership of B-4/40, Paschim Vihar and 25% share in Shalimar Cold Storage, B-50, Lawrence Road, Delhi. The Bank denies that the withdrawal of its offer was arbitrary or illegal for any reason.

11. This Court entertained the writ petition on 5.10.2005 and while issuing show cause notice restrained sale of property bearing No. KP 124, HSIDC Industrial Area, Kundli Tehsil and District Sonapat, Haryana. That interim order was continued; later, an interlocutory application being CM No. 1489/2006 was filed disclosing that a Memorandum of Understanding (MOU) had been arrived at on 27.1.2006 between the petitioner and one Shri Sanjay Batra (whereby the mortgaged property was agreed to be purchased for Rs. 85 lakhs and the entire amounts was to be deposited on or before 28.3.2006). This Court granted approval for sale of the property since it was substantially higher than the reserve price fixed by the DRT, i.e. Rs. 65,60,000/-, on condition that Rs. 10 lakhs was to be deposited with the Registrar General of this Court within seven days from the date of its order, i.e. 6.2.2006 and the balance Rs. 75 lakhs was to be deposited on or before 28.3.2006.

12. The Court again heard arguments on CM 1489/2006 on 4.5.2006. It was noticed that a sum of Rs. 6.5 lakhs was paid in installments when the OTS was in force and thereafter Rs. 10 lakhs was paid pursuant to the initial order of the Court. Later the purchaser deposited Rs. 85 lakhs and thus a total amount of Rs. 1,01,50,000/- was deposited to the satisfaction of the respondent - Bank's claims. The Court further recorded that due to its intervention a sum of Rs. 95 lakhs was collected which would ensure to the benefit of bank, which had agreed to settle the entire dispute by accepting Rs. 85 lakhs. The Bank submitted that it had received an offer for Rs. 92 lakhs. This was doubted. In view of the circumstance that the purchaser, Shri Batra had paid the entire amount, the Bank was directed to hand over the possession of the property to Shri Sanjay Batra and Shri Harminder Kohli. The Court also directed forthwith release of Rs. 90 lakhs to the Bank.

13. This Court's order was carried in an Appeal by the Bank to the Division Bench in LPA No. 1066/2006. The appellate bench did not disturb the directions and the appeal was disposed of on 2.11.2006. The Bank further appealed to the Supreme Court by Special Leave, in SLP 18503/2006. In those proceedings, the Court directed stay of contempt proceedings and later disposed of appeal arising out of the petition on 7.5.2007 (Civil Appeal No. 2398/2007). The Court required expeditious disposal of the present petition.

14. Mr. H.L. Tiku, learned senior counsel for the petitioner, contended that even though the Bank is a commercial organization, yet being statutory Corporation, it has the trappings of 'State' and, therefore, has to act in a fair and reasonable manner. He relied upon the judgment reported as *Bannari Amman Sugars Ltd. v. Commercial Tax Officer And Ors.* : (2004)192CTR(SC)492 and submitted that even a change in policy cannot be pleaded by a state agency, to resile or withdraw from binding commitments, by reason of the doctrine of promissory estoppel. Having induced the petitioner to offer settlement of its dues, accepted it and further acted upon it by adjusting the amount of Rs. 1.5 lakhs as well as accepting additional amounts later, the Bank could not, unilaterally withdraw the OTS.

15. Learned Counsel next submitted that the contention of the Bank about suppression of fact is flimsy and cannot be accepted. He submitted that the declaration furnished by Shri Virender Khullar with the Rajouri Garden Branch of Bank, had disclosed particulars of assets, on 25.10.1996. All these were known by the Bank, it therefore could not claim to be prejudiced on a later date when the acceptance of the OTS offer was communicated. The petitioner could not be blamed for concealment of fact much less material facts either from the Bank or the Court. He relied upon the judgment reported as *Plasto Pack Mumbai and Anr. v. Ratnakar Bank Ltd.* : AIR 2001 SC3651 . Counsel contended that the Supreme Court in that case had relied upon the affidavit furnished to a Bank offering to settle the amount and held that the Bank ought to have taken a reasonable stand and considered the settlement proposal to avoid litigation and early recovery of outstanding debts. Learned Counsel also submitted that the Court frowned upon the unreasonably rigid attitude of Banks.

16. Learned Counsel also relied upon the judgment of the Supreme Court reported as *Canara Bank v. P.R.N. Upadhyaya And Ors.* (1998) 6 SCC 526 and submitted that circulars issued by the RBI under Sections 21 and 35 of the [Banking Regulation Act, 1949](#), are statutory and have to be complied with by the Banks. In view of the above, the Bank, in this case, had to take all steps to effectuate the settlement and enable the petitioner to fulfill its obligation by suitably extending the time or at least keeping the offer open, till the time stipulated. It is contended, therefore, that the impugned letter cannot be sustained. Learned Counsel lastly

urged that the reasons given for any administrative action have to be relevant and germane to the issue. In this case, the ostensible reason for withdrawing the offer and the OTS contract was a complaint which appeared to be motivated. The Bank should have considered the relevance of such complaints, having regard to the materials existing with it. Had it done so, it would have discerned that there was no question of the petitioner having furnished a false declaration on an affidavit and it was in a position to easily verify whatever particulars were available, from its records. Its lapse cannot result in the petitioner having to suffer adverse consequences.

17. Mr. N.A. Khan, learned Counsel for the purchaser, who were imp led as parties - respondent submit that their rights to the property, cannot be adversely affected. They rely upon the fact that the application CM No. 1489/2006 was supplied in advance to the respondent - Bank and that at the time of its hearing the Bank neither raised any objection nor sought time to file its reply, when it was allowed. The Bank's later application, i.e. CM 2027/2006, for modification of the previous order of the Court was dismissed when it was held that the property should be handed over to the auction purchaser and when the amount of Rs. 85 lakhs was upheld as the correct market value. Learned Counsel contended that it was prejudiced due to pendency of the present proceeding because earlier it was a prosperous concern with an annual turnover of Rs. 9 crores and that subsequently the turnover dwindled to less than half of that.

18. Mr. Y.P. Narula, learned senior counsel for the respondent - Bank reiterated the contentions made in the Bank's reply. He submitted that the writ jurisdiction of this Court is equitable and discretionary. The petitioners' conduct in hiding relevant and material fact from the Bank and also from this Court disentitles it to any relief. He submitted that the petitioner was a willful defaulter who suffered a decree. As on date, the entire dues work out to over Rs. 2.26 crores. A recovery certificate was issued over six years ago. The petitioner deliberately concealed the first OTS proposal, which was made in February, 2003; in support he filed an affidavit which withheld material facts. The proposal was again revived in 2004 and on that basis the Bank accepted the offer with the payment of Rs. 85 lakhs. Had the petitioner disclosed the full and relevant facts about the nature and extent of his assets, the

Bank would not have agreed to settle the liabilities for Rs. 85 lakhs. This element of deception, it is contended, amounts to fraud. Learned Counsel relied upon the decision of the Supreme Court in S.P. Chengalvaraya Naidu v. Jagannath : AIR 1994 SC853 and submitted that a person who bases his case on falsehood cannot claim relief from the Court. Counsel submitted that anyone who approaches the Court should do so with clean hands and that abuse of judicial process would entitle dismissal of the case.

19. Learned Counsel contended that there is nothing arbitrary or unfair in regard to the issuance of the impugned letter. The petitioner was admittedly a defaulter who had suffered a decree in contested proceedings. He also resisted execution. Much later, he sought to avail the benefit of RBI circulars. Deliberately, the first offer which was made was not pursued with and was abandoned. It was later revived in the end of 2004. Nevertheless the Bank on the basis of the material furnished including the affidavits agreed to settle the liabilities by accepting Rs. 85 lakhs. Even that commitment could not be fulfilled within the time frame and the petitioner was granted two extensions. The Bank received a complaint about the petitioner's withholding of facts which ultimately resulted in the withdrawal of the OTS. It is, therefore, submitted that the Bank acted reasonably in the circumstances and withdrew the offer. He further submitted that while considering the reasonableness of any action or measure, of an executive authority, the conduct of the petitioner is equally relevant and cannot be forgotten. Learned Counsel relied upon the decision reported as Orissa State Financial Corporation v. Umesh Chandra Dani : (2001)10SCC522 . In this case, there was no violation of a statute, mala fide exercise of power or patent unreasonableness. The petitioner had also not challenged the recovery proceedings or the decree issued against it. In the circumstances, the Court should not exercise its discretionary jurisdiction and compel the Bank to settle the petitioner's liabilities for a particular amount.

20. It is now well established by decisions of the Supreme Court that, fairness and non-arbitrariness are inseparable elements of Article 14 and the Rule of Law. All actions of the state, and every public functionary in whatever sphere must be guided by reason and not humor, whim, or caprice or personal predilections of those entrusted to perform such duties. Conversely, State action, uninformed by

reason cannot be protected, and is open to attack on the ground of arbitrariness. (Style (Dress Land) v. Union Territory, Chandigarh : AIR 1999 SC3678 ; Master Marine Services (P) Ltd. v. Metcalfe & Hodgkinson (P) Ltd. : AIR 2005 SC2299 ; Ashoka Smokeless Coal India (P) Ltd. v. Union of India : (2007)2SCC640 ; Kumari Shrilekha Vidyarthi v. State of UP : AIR 1991 SC537 ; R.D. Shetty v. International Airports Authority of India : (1979)1ILLJ217SC , Mahabir Auto Store v. Indian Oil Corporation : [1990]1SCR818 . The question is, whether the refusal by the Bank to go ahead with the OTS is arbitrary or without any justification.

21. The petitioner is undeniably the bank's borrower. It could not repay its dues. The bank initiated recovery proceedings; they were contested by the petitioner, which suffered a decree. The petitioner did not satisfy the decree; it also contested the execution proceedings. The decree has become final. At the stage of execution, the petitioner once offered to settle its outstandings and pay Rs. 85 lakhs; later it did not pursue the offer. The petitioner resuscitated the offer, in the latter part of 2004; almost a year and a half later; the bank signified its approval. The bank claims that it was persuaded to do so on the strength of an affidavit furnished to it. Now a look at that affidavit, which is part of the record shows that the petitioner claimed not to own any assets, except the mortgaged plot, in Haryana. The petitioner requested extension to pay the entire amounts, twice; the bank agreed. The question is whether the bank's action in cancelling the OTS before the time granted to the petitioner expired, on the ground that it had concealed true facts, is unfair.

22. The petitioner argues that the materials about other properties were a matter of record, known to the bank. therefore, the latter cannot claim to be misled into accepting OTS. Here, facially, the contention is attractive - the question is whether these facts could have made a difference, or were relevant, and 'germane' to the issue entitling the bank to withdraw the OTS.

23. There can be no all pervasive formula about what constitutes arbitrariness or unfairness. Contextual settings more often than not, become decisive of the issue. An action determined to be arbitrary or unfair in one case, need not necessarily be so in another. It was said by Felix Frankfurter that expressions should not be used

as opportunities for a judge to use words as 'empty vessels into which he can pour anything he will'-his caprices, fixed notions, even statesmanlike beliefs in a particular policy. Nor, on the other hand, is the process a ritual to be observed by unimaginative adherence to well-worn professional phrases.

24. The OTS is no doubt a scheme meant to ensure speedy closure of cases where banks are for many reasons, unable to recover advances from their borrowers. These schemes extend to cases where borrowers - as in this instance - suffer decrees and are exposed to distraint, or execution proceedings. The banks, when approached by their debtors require full disclosure of existing assets, as also other details. These could be for various reasons. Obviously this is to assist the bank concerned in its decision making process, and make realistic assessments about what can be recovered, the paying capacity of the borrower, etc. The bank would be writing off possibly substantial portions of its liabilities. Once it agrees, the borrower can take appropriate steps to raise the amounts, and ordinarily, the bank should not resile from this arrangement. One must however not state this as a compulsion, because the commercial nature of the transaction continues to be what it is; it is even more pronounced, since the bank is a judicially determined creditor, held to be entitled to specified amounts. There can however, be situations, where the bank might be justified in not proceeding with the OTS. The bank might itself become subject to financial vagaries; it might come by information which was not available to it, when the OTS offer was made, and so on. In such cases, its decision not to proceed with the OTS may be justified.

25. The petitioner argues that the bank, having accepted the OTS cannot resile from it, since its action is reviewable on an applicability of promissory estoppel. This rule was explained, in previous decisions of the Supreme Court to be applicable, where one party has, by his word or conduct made to the other a clear and unequivocal promise or representation which intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise or representations made and it is in fact so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so, having

the regard to the dealings which have taken place between the parties. (Ref. Union Of India and Ors., Appellants v. Godfrey Philips India Ltd. : [1986]158ITR574(SC) ; Sharma Transport v. Govt. of AP : AIR 2002 SC322 ; Larsen And Toubro Ltd. v. Union of India AIR 2005 SC 180. In this case, the petitioner requested the bank to accept the OTS, which it did; the petitioner repeatedly sought extension of time, which was given. Nothing has been shown, nor has it been pleaded that the petitioner altered its circumstances, to its prejudice, as a result of the bank's representation. In the circumstances, the mere acceptance of the OTS, having regard to its nature, cannot clothe the petitioner with the right to insist that the bank should, under all circumstances, proceed with it, and compelled to accept amounts which are lower than what it is legally entitled. There is no legal provision on which such a right can be rooted.

26. What then are the obligations of the bank in public law in view of its undeniable status as a statutory corporation fitting the description of 'State'? Undoubtedly each action has to be bona fide, founded on reason or rationale, relevant to the object of power conferred upon it, and arrived at fairly. Much would also depend on the nature of the function for which judicial scrutiny is sought. The intensity of the gaze - of the court, would be highest, where state action concerns the liberties and fundamental freedoms of the individuals, whereas the threshold of unacceptable behavior would be higher where the state acts in the commercial, financial or fiscal sphere. The courts there have traditionally recognized a greater 'free play in the joints' (Ref. New Horizons Limited and Anr., Appellants v. Union Of India : (1995)1SCC478 ; Directorate Of Education and Ors. Petitioner v. Educomp Datamatics : AIR 2004 SC1962 etc.) It would be useful to extract the following passage from the decision of a five member bench of the Supreme Court, in Life Insurance Corporation of India, Appellant v. Escorts Ltd. and Ors. : 1986(8)ECC189 :

When the State or an instrumentality of the State ventures into the corporate world and purchases the shares of a company, it assumes to itself the ordinary role of a shareholder, and dons the robes of a shareholder, with all the rights available to such a shareholder. There is no reason why the State as a shareholder should be expected to state its reasons when it seeks to change the management, by a

resolution of the company, like any other shareholder....

To draw an analogy, the State's or its agency's status cannot impede it from exercising what might be termed as choices based on commercial compulsions. The superadded obligation to act fairly and non-arbitrarily, and based on some reasons therefore are not disabilities placing a permanent handicap upon the state. All options available to commercial concerns, subject to the constitutionally ordained obligations, are available.

27. Here it is evident from the record that the petitioner had furnished declarations to the bank, at the time of availing credit, in 1996, claiming to be either owner or in control of assets worth more than Rs. 400 lakhs, in aggregate. Another similar declaration was filed, to obtain advances. Yet, after seven years, when the decree had been made, he claimed to be owner of only the encumbered property; strangely no mention of other property was made. No doubt, the bank was in possession of both the documents, i.e. the earlier declarations, as well as the later affidavit. Yet, the petitioner was seeking for the benefit of waiver of its substantial liabilities. therefore, the bank, in terms of its scheme and policies, wanted disclosure of all the facts. This time, the bank needed it vitally, since it had to make a realistic appraisal of what could be recovered, and what should have been written off. therefore, the object of full disclosure was to assist in a proper evaluation, as the bank is also entrusted with public monies and obliged to conduct its business and affairs efficiently. The circumstances demanded that the petitioner make full and truthful disclosure; he was later found not to have done so. Fairness, in such cases, demanded by defaulting or recalcitrant borrowers, from banks or financial institutions 'is not a one way street' (Ref U.P. Financial Corporation, Appellant v. Gem Cap (India) Pvt. Ltd. : [1993]2SCR149 ; Haryana Financial Corporation and Anr. v. Jagdamba Oil Mills : [2002]1SCR621) The bank's position here, that since the petitioner seeks equity (and exercise of discretion, as in this case) he should have approached with clean hands, is unexceptionable. The court therefore, concludes that the petitioner has not been able to establish any justifiable ground for interfering in exercise of jurisdiction under Article 226 of the [Constitution of India](#).

28. Now, as far as the aspect of the third party purchaser is concerned, no doubt the court, had in its previous orders, permitted the sale, and even directed handing over of possession. However, as concluded in this judgment, the bank's action cannot be faulted. The court's order, in a sense pre-judged the dispute; it also brushed aside the bank's contention that a better offer had become available. More fundamentally, there is no rule or law which enables this Court to sanction sale of immovable properties as was done in the interim orders. That power is invested with the civil court, and in cases like this one, the DRT or the Recovery Officer, and in defined instances, with the company court under the Companies Act. In the absence of any power, the court-assisted, or sanctioned sale cannot be now 'regularized' as a post facto event. The third party, who has been added to these proceedings, took a calculated risk in this regard, by entering into an agreement to sell; there could have been no assurance at that stage that the court would permit the sale, as it did, or that the final order would have protected its interests. In such cases, even if equities arise, they would have to be balanced. The court cannot be unmindful of the bank's rights to recover what is reasonably and justly due, and its participation in the proceedings in accordance with law. The appropriate principle in such cases where equity is claimed by both the parties, is, for the court to 'let the loss lie where it falls'. (Ref. Sainen Krishna Majumdar v. Malik Labhu Masih : [1989]1SCR817 ; Pohla Singh @ Pohla Ram (D) By Lrs. and Ors, v. State Of Punjab and Ors. : (2004)6SCC126 .).

29. The petition and all pending interlocutory applications have to fail in the light of the above findings. The third party purchaser, imp leaded in this petition, is entitled to refund of the amounts lying in Court. In the circumstances of the case, the parties are left to bear their costs. The writ petition and pending applications are dismissed, in the above terms.