

GAHC010167292024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4183/2024

1: DIPIKA SARMA AND ANR

W/O SHRI PRAFULLA SARMA, RESIDENT OF - HOUSE NO. 44, JANAPATH,
NORTH JYOTINAGAR, RAMASAHIL, GUWAHATI, P.O.- BAMUNIMAIDAM,
P.S.- CHANDMARI, DISTRICT- KAMRUP(METROPOLITAN), ASSAM, PIN-
781021.

2: PRAFULLA CHANDRA SARMA

S/O- LATE RABI CHANDRA SARMA RESIDENT OF - HOUSE NO. 44
JANAPATH NORTH JYOTINAGAR RAMASAHIL GUWAHATI P.O.-
BAMUNIMAIDAM P.S.- CHANDMARI DISTRICT-KAMRUP(METROPOLITAN)
ASSAM PIN- 781021

VERSUS

1: INDIAN BANK AND 2 ORS (ERSTWHILE ALLAHABAD BANK)
REPRESENTED BY THE CHIEF MANAGER, FANCY BAZAR BRANCH,
GUWAHATI, DISTRICT- KAMRUP(METROPOLITAN), ASSAM, PIN- 781001.

2:M/S NECT GROUP OF INSTUTUTIONS REPRESENTED BY ITS
PROPRIETOR- SHRI TILOK DAS GITA NAGAR OPPOSITE GITA NAGAR
HIGH SCHOOL MOTHER TERESA ROAD GUWAHATI DISTRICT-
KAMRUP(METROPOLITAN) ASSAM PIN- 781024.

3:TILOK DAS

S/O LATE SAMBHU RAM DAS R/O- FLAT NO. 7B 7TH FLOOR
ASHI PARADISE MOTHER TERESA ROAD HATIGARH CHARALI
DISTRICT- KAMRUP(METROPOLITAN) ASSAM PIN- 781024

For the Petitioner(s) : Mr. G. Alam, Advocate.

For the Respondent(s) : Ms. S. Yasmin, Advocate on behalf of Mr. M. Sharma, Advocate.

- B E F O R E -
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE KARDAK ETE

20.08.2024
(Vijay Bishnoi, CJ)

This writ petition is filed by the petitioners being aggrieved with the auction notice issued by the respondent Bank under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter to be referred as "SARFAESI Act").

Mr. G. Alam, learned counsel for the petitioners has submitted that this Court, vide order dated 31.05.2024, while disposing of WP(C) No.5513/2023, has granted liberty to the petitioners to approach the respondent Bank to solve the dispute by arriving at an amicable settlement. It is contended that though the petitioners have approached the respondent Bank by filing appropriate representation, however, the respondent Bank has not responded to the said representation and has illegally issued the impugned auction notice. It is further submitted that the Bank authorities be directed to consider the representation filed on behalf of the petitioners and to reach an amicable settlement as per the new One Time Settlement (OTS) Policy.

Heard the learned counsel for the petitioners and perused the material available on record.

It is to be noticed that the petitioners have earlier granted the benefit of OTS Scheme by the respondent Bank. However, as per the agreed terms of the OTS Scheme, the petitioners have failed to honour the same and, therefore, the respondent Bank has initiated proceedings for auctioning the property in question of the petitioners under the provisions of the SARFAESI Act. It is also to be noticed that earlier the petitioners have approached this Court by filing a

writ petition being WP(C) No.3477/2021 and the same was dismissed as withdrawn on 05.01.2022, while granting opportunity to the petitioners to have a One Time Settlement with the respondent Bank.

Pursuant to the same, the petitioners have entered into a One Time Settlement with the respondent Bank but as observed earlier, they have failed to honour the terms and agreement of the said settlement. Thereafter, again the petitioners have approached this Court by filing WP(C) No.5513/2023 and this Court, taking into consideration the medical condition of the petitioners on humanitarian ground, has interfered in the matter and directed the petitioners to deposit a sum of ₹ 10,00,000/- (Rupees Ten Lakhs) with the respondent Bank within 10(ten) days vide order dated 19.09.2023 and has stayed the e-auction notice dated 02.09.2023. The Court has further observed in the said order that that the petitioners may approach the Bank Officials to undertake a process of amicable settlement looking to the grave medical conditions being faced by the petitioners.

It appears that despite the opportunity granted by this Court vide order dated 19.09.2023, the petitioners have failed to reach an amicable settlement. However, when the respondent Bank has again initiated the proceedings under the SARFAESI Act, the petitioners have pressed WP(C) No.5513/2023 and this Court, vide order dated 31.05.2024, has disposed of the said writ petition while observing that no case for interference is made out. By the said order, an opportunity was granted to the petitioners to reach an amicable settlement with the respondent Bank with a further direction to the Bank to take a sympathetic view in the matter looking to the medical condition of the petitioners.

As per the petitioners, they have approached the respondent Bank but the Bank has not responded any heed to their request for One Time Settlement.

Be that as it may, it is now settled as per the decision of the Hon'ble Supreme Court rendered in ***Bijnor Urban Cooperative Bank Limited, Bijnor & Ors. -Vs- Meenal Agarwal & Ors.***, reported in ***(2023) 2 SCC 805*** that no borrower can claim, as a matter of right, the benefit of OTS Scheme. The relevant portion of the decision of the Hon'ble Supreme Court rendered in ***Bijnor Urban Cooperative Bank Limited, Bijnor*** (supra) is reproduced herein below:-

“12. *Even otherwise, as observed hereinabove, no borrower can, as a matter of right, pray for grant of benefit of one-time settlement scheme. In a given case, it may happen that a person would borrow a huge amount, for example, Rs 100 crores. After availing the loan, he may deliberately not pay any amount towards instalments, though able to make the payment. He would wait for the OTS scheme and then pray for grant of benefit under the OTS scheme under which, always a lesser amount than the amount due and payable under the loan account will have to be paid. This, despite there being all possibility for recovery of the entire loan amount which can be realised by selling the mortgaged/secured properties. If it is held that the borrower can still, as a matter of right, pray for benefit under the OTS scheme, in that case, it would be giving a premium to a dishonest borrower, who, despite the fact that he is able to make the payment and the fact that the bank is able to recover the entire loan amount even by selling the mortgaged/secured properties, either from the borrower and/or guarantor. This is because under the OTS scheme a debtor has to pay a lesser amount than the actual amount due and payable under the loan account. Such cannot be the intention of the bank while offering OTS scheme and that cannot be the purpose of the scheme which may encourage such a dishonesty.*

13. *If a prayer is entertained on the part of the defaulting unit/person to compel or direct the financial corporation/bank to enter into a one-time settlement on the terms proposed by it/him, then every defaulting unit/person which/who is capable of paying its/his dues as per the terms of the agreement entered into by it/him would like to get one-time settlement in its/his favour. Who would not like to get his liability reduced and pay lesser amount than the amount he/she is liable to pay under the loan account? In the present case, it is noted that the original writ petitioner and*

her husband are making the payments regularly in two other loan accounts and those accounts are regularised. Meaning thereby, they have the capacity to make the payment even with respect to the present loan account and despite the said fact, not a single amount/instalment has been paid in the present loan account for which original petitioner is praying for the benefit under the OTS Scheme.

14. *The sum and substance of the aforesaid discussion would be that no writ of mandamus can be issued by the High Court in exercise of powers under Article 226 of the Constitution of India, directing a financial institution/bank to positively grant the benefit of OTS to a borrower. The grant of benefit under the OTS is always subject to the eligibility criteria mentioned under the OTS scheme and the guidelines issued from time-to-time. If the bank/financial institution is of the opinion that the loanee has the capacity to make the payment and/or that the bank/financial institution is able to recover the entire loan amount even by auctioning the mortgaged property/secured property, either from the loanee and/or guarantor, the bank would be justified in refusing to grant the benefit under the OTS scheme. Ultimately, such a decision should be left to the commercial wisdom of the bank whose amount is involved and it is always to be presumed that the financial institution/bank shall take a prudent decision whether to grant the benefit or not under the OTS scheme, having regard to the public interest involved and having regard to the factors which are narrated hereinabove.”*

In such circumstances, we are of the view that this writ petition is not maintainable under Article 226 of the Constitution of India. Hence, the same is dismissed. However, the petitioners would be at liberty to avail appropriate remedy available to them under the provisions of the SARFAESI Act.

JUDGE

CHIEF JUSTICE