

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF DECEMBER, 2024

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE UMESH M ADIGA

WRIT APPEAL NO.1341 OF 2021 (GM-RES)

BETWEEN:

HOUSING AND URBAN DEVELOPMENT
CORPORATION LTD.
A GOVT. OF INDIA ENTERPRISE
REGD. UNDER THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT:
"HUDCO BHAVAN"
INDIA HABITAT CENTRE
LODHI ROAD, NEW DELHI-110 003
AND HAVING REGIONAL OFFICE AT:
MANIPAL CENTRE, NORTH BLOCK
7TH FLOOR, UNIT-703 AND 704
No.47, DICKENSON ROAD
BENGALURU-560 042
REPRESENTED BY REGIONAL CHIEF-IN-CHARGE
SRI. B.T. UMESH

...APPELLANT

(BY SRI. ANIKETH B.C., ADVOCATE)

AND:

M/s. JNANA SAROVARA EDUCATIONAL TRUST (R)(JSET)
A PUBLIC CHARITABLE TRUST
REGISTERED UNDER
THE PROVISIONS OF THE INDIAN TRUST ACT
HAVING ITS OFFICE AT
"PALAHARA DARSHINI COMPOUND"
MAHARAJA SHOPPING COMPLEX
OPPOSITE SUBURB BUS STAND
B.N. ROAD, MYSURU-570 001

(KARNATAKA)
 REPRESENTED BY ITS MANAGING TRUSTEE
 SHRI. SUDHAKAR SHETTY

...RESPONDENT

(BY SRI. UDAYA HOLLA, SENIOR COUNSEL FOR
 SRI. GANAPATI BHAT VAJRALLI, ADVOCATE FOR
 CAVEATOR/RESPONDENT)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT, 1961, PRAYING TO CALL FOR THE RECORDS AND QUASH THE IMPUGNED ORDER DATED 29.10.2021 PASSED IN WP No.33016/2011 (GM-RES), PASSED BY THE LEARNED SINGLE JUDGE BY ALLOWING THIS APPEAL AND DISMISS THE SAID WRIT PETITION WITH COSTS THROUGHT AND ETC.

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 09.12.2024 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
 and
 HON'BLE MR. JUSTICE UMESH M ADIGA

CAV JUDGMENT

(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)

This writ appeal is filed challenging the order dated 29.10.2021 passed by the learned Single Judge in W.P.No.33016/2011 (GM-RES).

2. We have heard Shri. Aniketh B.C., learned counsel appearing for the appellant and Shri. Udaya Holla, learned Senior counsel as instructed by Shri. Ganapati Bhat

Vajralli, learned counsel appearing for the caveator/respondent.

3. The respondent herein, an Educational Trust had availed the loan of Rs.4.60 Crores from the appellant for construction of a Residential School offering the immovable property and the buildings to be constructed thereon as security apart from offering personal guarantees. Thereafter, additional loan of Rs.4 Crores was sanctioned on 03.07.2004 on execution of supplementary documents and extending the mortgage. The request for enhancing the loan to Rs.18.60 Crores was rejected and paripassu charge was created to the State Bank of India (SBI). The loan account fell into arrears and the recovery proceedings were initiated. Directions issued by the DRT and the High Court for re-scheduling of the loans and the request for a One Time Settlement (OTS) is made by the respondent. Admittedly, substantial amounts were deposited in pursuance to the OTS proposal. However, the appellant refused to accept the proposal on the ground that the value of the security was substantially higher. The writ petition

was therefore filed on 23.08.2011, seeking directions to the respondents to consider the OTS Scheme as agreed in the letter dated 15.07.2011 and issue final confirmation letter for accepting the OTS Scheme. The Writ Petition was disposed of by judgment under appeal directing the appellant to accept the OTS proposal for a sum of Rs.11,74,00,055/- as also directing the respondent to pay an additional amount of Rs.1,17,40,005/- within eight weeks from the date of acceptance of the OTS proposal.

4. The learned counsel for the appellant contends that the appellant cannot be compelled to accept an OTS proposal and that the value of the property given as security and the possibility of realizing the higher amount from the Trust are matters which the appellant is entitled to decide taking note of the financial implications and viability. It is contended that the appellant could have transferred the management of the School as a running concern to any other international School for adequate consideration and that the said aspect was not considered by the learned Single Judge.

5. The learned counsel appearing for the appellant has placed reliance on the following judgments:-

- ***Maharaji Educational Trust v. Housing and Urban Development Corporation Limited and Others***, reported in **(2017) 14 SCC 453**; and
- ***Bijnor Urban Cooperative Bank Limited, Bijnor and Others v. Meenal Agarwal and Others***, reported in **(2023) 2 SCC 805**.

6. Shri. Udaya Holla, learned senior counsel appearing for the respondent would on the other hand contend that the Constitution Bench of the Apex Court in ***Central Bank of India v. Ravindra*** reported in **(2002)1 SCC 367**, has clearly held that the Reserve Bank of India (RBI) guidelines including those issued on the subject of OTS are statutory in nature and shall bind all banking institutions which fall within the net of such directives. For such transactions which are not squarely covered by such circulars, the RBI directives are to be treated as standards for the purpose of deciding whether the interest charged is excessive, usurious or opposed to public policy. It is contended that the judgments rendered to the contrary are

Per incuriam. The appellant, though a financial institution is also a public functionary answering the definition of State under Article 12 of the Constitution of India and it cannot refuse to accept an OTS proposal only because the property offered as security has higher value. It is contended that the OTS proposal had been accepted by Annexure 'AB'-letter dated 15.07.2011 and that fact had been duly intimated to the respondent. It is further submitted that all amounts demanded under the OTS Scheme and an excess amount of Rs.3 Crores has been paid by the respondent and that the appeal is completely misconceived and without merits.

7. The learned senior counsel appearing for the respondent has placed reliance on the following judgments:-

- ***Sardar Associates and Others v. Punjab & Sind Bank and Others***, reported in **(2009) 8 SCC 257**;
- ***M/s. Devidayal Castings Pvt. Ltd. v. Haryana Financial Corporation and Another***, reported in **2016 SCC OnLine SC 1134**;
- ***M/s. Kemtrode Private Ltd., v. The Recovery Officer and Another***, by Order dated **01.08.2008** passed in **W.P.No.3749 of 2007 (GM-DRT)**;

- ***M/s. Hotel Vandana Palace v. Authorized Officer and Others***, reported in **2011 SCC OnLine Kar 3928**;
- ***Vasu P. Shetty v. Hotel Vandana Palace and Others***, reported in **(2014) 5 SCC 660** and
- ***State Bank of India v. Vijay Kumar***, reported in **(2007) 11 SCC 369**.

8. We have considered the contentions advanced. We immediately notice that the instant case is not one, where the respondent-educational Society is a willful defaulter, who has refused to make payments to the HUDCO in spite of opportunities provided to it by the Tribunal and the Court as was the case in the judgments relied on by the learned counsel for the appellant. It is an admitted case that a request for enhancement of the loan to Rs.18.60 Crores was made in the year 2005, which was not acceded to by the appellant. Therefore, a term loan of Rs.3.40 Crores had to be availed by the respondent from the SBI, subject to paripassu charge on the immovable properties, which were mortgaged by the respondent with the appellant. The respondent had submitted Annexures 'R', 'S' and 'T' request for re-scheduling of the loan, which was also rejected and

action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act') was initiated on 17.06.2008. Writ Petition No.1858/2009 was filed by the respondent before this Court and pursuant to a direction issued, an amount of Rs.3 Crores was paid by the respondent.

9. The specific stand of the appellant was that the OTS proposal submitted by the respondent would be considered subject to payment of Rs.3 Crores as ordered by this Court. The amount of Rs.3,00,32,100/- was admittedly paid on 19.05.2011. The OTS proposal of Rs.11,74,55,000/- was provisionally accepted by letter dated 15.07.2011 and the respondent was required to remit 5% of the OTS amount. The said amount was also remitted by way of Demand Draft. It was thereafter that the appellant decided not to extend the OTS benefit to the respondent in view of the fact that the value of the mortgaged property was high. On 26.08.2011, an amount of Rs.7,32,00,000/- was deposited by the respondent pursuant to the permission

granted by this Court and the Demand Draft for the said amount was also encashed. Thereafter, on 23.02.2012, this Court directed the appellant to receive a further amount of Rs.4 Crores by way of Demand Draft, which was also done. Therefore, even after the SARFAESI Act has been initiated against the respondent admittedly an amount of Rs.14,32,32,100/- has been paid apart from the payments made before 14.05.2010. Further, pursuant to the order of this Court, a further amount of Rs.1,17,40,005/- was again paid along with a covering letter dated 07.11.2022; however, the said amount has apparently not been encashed by the appellant.

10. It is in the background of the above payments made by the respondent that the question of acceptance of the OTS proposal is to be considered by this Court. It is an admitted fact that the mortgaged property is the immovable property on which running educational institution is situated. The fact that payments much in excess of the OTS proposed by the respondent have already been made is not in dispute. The Apex Court in ***Devidayal Castings (P) Ltd. v.***

Haryana Financial Corpn., reported in ***(2022) 16 SCC 411,*** held that the decision of the Haryana Finanacial Corporation not to accept the settlement amount on the ground that the value of the secured assets is high amounts to a change of policy to the detriment of the borrower and that the settlement in terms of the policy in force was liable to be accepted.

11. The learned Single Judge, in the judgment under appeal, has considered the factual aspects of the matter and had found that the outstanding balance as on 28.06.2011 was only an amount of Rs.15,82,94,000/-. It was also found that the rejection of the OTS proposal on the ground that the value of the mortgaged property was high was absolutely untenable in view of the fact that the property was one on which a running educational institution was in existence. The fact that the appellant is not just a Commercial Financial Institution but also an instrumentality of the State was also taken into account.

12. In the above view of the matter, we are not inclined to interfere with the exercise of jurisdiction by the learned Single Judge in this intra-Court appeal especially in view of the fact that substantial amounts had been paid by the respondent in pursuance of the orders and permissions granted by this Court. The amounts paid by the respondent as of now shall be accepted by the appellant as full and final settlement of the amounts due on the loan transaction. No further amounts are liable to be paid by the appellant. The Demand Draft for a sum of Rs.1,17,40,005/- shall be returned to the appellant in view of the fact that the further amount of Rs.4 Crores has been paid by way of Demand Draft pursuant to the Order dated 23.02.2012. However, in the facts and circumstances of the case, we hold that the respondent shall not be entitled to any refund of the amounts already paid in excess of the OTS amount.

13. Writ Appeal stands *disposed of* accordingly.

Pending IAs, if any, also stand *disposed of*.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(UMESH M ADIGA)
JUDGE**

cp*