IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6835 of 2015

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1. Surendra Kumar Singh S/o Late Harbansh Narain Singh
2. Sangita Singh W/o Surendra Kumar Singh
3. Draupadi Devi W/o Harbansh Narain Singh All Resident of Mohalla Dhanpura, P.S. Ara, District Bhojpur, at present 401 Laxmi Apartment, Rai Ram Briksha Path, Nehru Nagar, P.S. Patliputra, District Patna-13.

.... Petitioner/s

Versus

1. The State Bank of India, a Body Corporate, constituted under State Bank of India Act, 1955, having its Corporate Centre at Madamcama Road, Nariman Point, Mumai-400021 and its local Head Office at Gandhi Maidan, Patna-80001 and amongst one of its branches known as State Bank of India, Ara Branch, Bhojpur represented by Assistant General Manager.
2. The General Manager, State Bank of India, Judges Court Road, Patna.
3. The Deputy General Manager, State Bank of India, Judges Court Road, Patna.
4. The Assistant General Manager, State Bank of India, Ara Branch, District Bhojpur.
5. The Chief Manager, State Bank of India, Ara Branch, District Bhojpur.

.... Respondent/s

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Appearance :

For the Petitioners : Mr. Mahesh Narain Parbat, Sr. Advocate.
For the Respondent : Mr. Suresh Prasad, Advocate.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL ORDER

5 28-07-2015 Intrinsically the dispute between the parties relate to settlement of the loan account held by the petitioners with the respondent-State Bank of India (for short 'the Bank') which was classified as Non Performing Asset (NPA) on 28.2.2008 resulting in generation of another account called Advance Under Collection Account (AUCA) No. 3169596037.

The petitioner no.1 in order to run his business applied for mortgage term loan of Rs. 16 Lakhs to the respondent

Bank which was sanctioned and after execution of the loan documents the agreement was reached between them and the properties were mortgaged. The petitioners defaulted in making payment of the instalments of the loan amount. Consequently, the respondent-Bank declared /classified the said loan account as NPA. A litigation was filed by the respondent- Bank before the Debt Recovery Tribunal, Patna (DRT) for realization of the outstanding dues in the sum of Rs. 20,51,682/- and the future interest at the contracted rate. An account of settlement was reached between the parties and the petitioners claim to have deposited Rs. 18,11,682/- with the respondent Bank. The proceeding before the DRT was disposed of on 10.1.2012 with certain observation. Some of the post dated cheques furnished by the petitioner to the respondent Bank stood dishonoured. The proceeding before the DRT was revived and on contest decreed on 01.11. 2012. In the year 2014, the respondent Bank introduced State Bank of India OTS scheme 2014-15 for settlement of the loan accounts which was classified as NPA on or before 31.3.2012. According to the petitioners, the admitted dues as on 31.3.2014 was Rs. 9,90,357.68/-. Indisputably, the petitioners had paid Rs. 2,38,000/- as upfront amount. The claim of the petitioners is that rest 70% of the OTS amount would be Rs. 4,55,250.68/-

after grant of waiver as per the OTS scheme which the petitioners are entitled to pay after deducting a sum of Rs. 2 lakhs paid after 31.3.2014. The rest amount in the sum of Rs. 2,55,251/- has been paid to the respondent Bank during the pendency of this writ petition. The respondent Bank vide communication dated 02.04.2015 (Annexure-14) directed the petitioners to pay the rest amount of Rs. 2,97,107/-. The said communication of the Bank is under challenge in the present writ petition. According to the petitioners, they are entitled to the waiver under the OTS scheme and if the same is granted then they are liable to pay only a sum of Rs. 2,55,251/- which has already deposited with the respondent Bank whereas the respondent Bank has raised a claim for payment of a sum of Rs. 2,97,107/- for final settlement of the loan account of the petitioners.

Heard Mr. M.N. Parbat Senior Counsel for the petitioners and Mr. Suresh Prasad for the respondent Bank.

It has been submitted by Mr. Parbat that there is no dispute that the petitioners qualify for consideration of their case for one time settlement of the NPA account under the scheme appended to the writ petition as Annexure-3 as, on the cut off date of 31.3.2014, the outstanding dues of the Bank was less than 10 lakhs. Relying on clause -4 of the OTS scheme , it has been argued that the petitioners would be entitled to waiver of notional interest from the date of NPA as also 30% in AUCA and other written off accounts. Waiver of 30% of the admitted dues in the sum of Rs. 9,90,357.68/- requires to be deducted from the dues which comes to Rs. 2,97,107/-. The petitioners were, therefore, required, as per the OTS scheme, to pay upfront 30% thereof which they have already paid. The remaining 70% of the amount is required to be paid within 60 days thereof. The petitioners had deposited Rs. two lakhs in the AUCA account after 31.3.2014, which requires to be deducted from the total outstanding dues. In this way the petitioners are required only to pay Rs. 2,55,251/- which they have already paid.

In contra, the counsel for the respondent Bank has contented that the petitioners neither deposited 30% of Rs. 9,90,357.68 nor deposited the rest 70% of the aforesaid amount. The amount in the sum of Rs. two lakhs which the petitioners deposited after 31.3.2014 was accepted by the respondent Bank and the same is also liable to be adjusted against the outstanding dues of the petitioners in the Bank with a view to liquidate the loan account and waive the entire interest in the decretal amount of Rs. 20,51,000/- w.e.f. 1.8.2008. In other words, the case of the respondent Bank is that the petitioners were required to deposit

30% of rest 7,90,357.68/- along with application and the rest 70% of Rs. 7,90,357.68/- within 60 days whereas the petitioners' deposited Rs. 2,38,000/- on 31.12.2014 and promised to pay the balance in the sum of Rs. 5,52,357.68 within 60 days but the petitioners deposited only Rs.2,55,251/- on 28.2.2015 and prayed for issuance of no dues certificate without paying the balance. In such circumstances, the impugned letter dated 21.4.2015 was issued to pay the balance amount of Rs. 2,97,107.00/-.

Indisputably, it is a matter of settlement of account between the parties. Settlement pre supposes consent of both the parties. In the process of settlement, the creditor is expected to relinquish to a sum of money due to it and agrees to take a lesser amount for liquidation of the liability of the debtor. Obviously, there can be no settlement without the consent of both the parties. In such a situation, essentially consent of the parties to the agreement is involved. It would be difficult for this Court to issue writ of mandamus to accept the proposal of one time settlement as it does not come within the principle of writ of mandamus invoking Article 226 of the Constitution of India. This Court is not oblivious of the fact that the petitioners were in default soon after they borrowed the loan inasmuch no effort was made to write off those dues. The borrowers were thus chronic defaulter. It has been submitted on behalf of the respondent Bank that in the light of the provisions contained in the OTS scheme both the parties sat together for settlement of the account with a view to liquidate the same and after due deliberations it was agreed that a sum of Rs. 7,90,357.68/- remained payable to the Bank for liquidation of the loan account as per the stipulation in the OTS scheme. Upfront 30% in the sum of Rs. 2,38,000/- was paid on 31.12.2014 and both parties agreed that balance dues in the loan account shall be paid by the petitioners in the sum of Rs. 5,52,357/- which the petitioners did not pay although they had agreed to pay. Subsequently during the pendency of the writ application a sum of Rs. 2,55,251/- has been deposited by the petitioners, and as such, the remaining amount is still outstanding in the AUCA account which the petitioners are required to pay in order to liquidate the loan account. This Court, therefore, finds that with a view to settle the account both the parties after due deliberations agreed on certain amount due and payable by the petitioners to the respondent Bank. In view of the position in law discussed above, it is difficult for this Court to issue a mandamus commanding the respondents to accept a lesser amount as prayed in the writ petition. The outstanding amount as on 31.3.2014 as agreed between the parties was Rs. 7,90,357/-

after payment of part whereof. The petitioners have deposited 2,38,000/- on 31.12.2014 i.e. 30% of the aforesaid amount. The balance thereof is, therefore, liable to be paid by the petitioners. Even as per Clause 3 of the OTS scheme (Annexure-3) the actual outstanding amount as on 31.3.2014 in the account has to be reckoned.

In the light of the discussions made hereinabove, this Court finds no apparent illegality in the demand raised by the respondent Bank under letter dated 2.4.2015 (Annexure-14) which has been challenged in the writ petition.

The writ application fails and is, accordingly, dismissed.

(Kishore Kumar Mandal, J)

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