* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: February 02, 2015
Pronounced on: February 23, 2015

\+ **W.P.(C) 992/2015, CAV 111/2015 & C.M. Nos.1750-1751/2015**

M/S. DURHA MACHINES PVT. LTD. AND ORS. ..... Petitioners
Through: Mr. Dayan Krishnan, Sr. Adv. with Ms. Swati Bhushan and Ms. Manvi Priya, Advs.

versus

STATE BANK OF PATIALA ..... Respondent
Through: Mr. Sanjiv Kakra, Mr. Bheem Sain Jain, Ms. Vaishali Kakra, Mr. Vipin Bhaskar and Mr. Ishaan Aggarwal, Advs.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE R.K.GAUBA

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1. This writ petition brings a challenge to the order dated 19.12.2014 of Debts Recovery Appellate Tribunal (hereinafter referred to as "the DRAT"), New Delhi passed in appeal No. 157/2013 arising out of original application (OA) No. 583/1996 (Delhi-II) decided by Debts Recovery Tribunal (hereinafter referred to as "the DRT") on 11.03.2013.

2. The OA had been brought before the DRT by State Bank of Patiala

(the first respondent herein) in 1996 under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "the RDDBFI Act") for recovery of ₹1,01,80,015/-, impleading (amongst others) the petitioners as defendants No. 1 to 4 and 6 respectively. Defendant No. 5 was discharged by the bank midway the proceedings on receipt of ₹110 Lacs in March, 2007 and, thus, seems to have been dropped from the array. The OA was dismissed by DRT mainly on the basis of conclusion that by accepting the amount of ₹110 Lacs (₹70 Lacs paid on 29.03.2007 and ₹40 Lacs paid on 30.03.2007), the bank had entered into one-time settlement (OTS) whereupon it had lost its title to further prosecute the matter for recovery of the amount claimed in the OA.

3. The first respondent bank was successful in appeal before the DRAT which has taken the view that the receipt of the amount of ₹110 Lacs on the basis of proposal for settlement by a third party could not be treated as OTS so as to frustrate the remaining claim. The judgment of DRT was, thus, set aside and the bank given the liberty to recover its dues from the petitioners in accordance with law, the compromise involving the receipt of ₹110 Lacs in March, 2007 to be treated as compromise only for release of one mortgaged property and not as OTS of the entire dues.

4. It is necessary to go into the history of this litigation at some length.

5. The first petitioner (hereinafter "the borrower") had obtained from the bank on 14.12.1989 four facilities, namely, Cash Credit Hypothecation limit of ₹20 Lacs, bank guarantee of ₹6 Lacs, letters of credit for ₹20 Lacs and Usance Bill discounted of ₹12 Lacs and later, on 13.01.1990, medium term loan of ₹30 Lacs. The petitioners No. 2 to 4 offered personal guarantees while petitioner No. 5 and one Ms. Reena Bhatia (impleaded as defendant

No. 5 in the OA) had offered collateral securities by way of mortgage of their respective immoveable properties. The fifth petitioner being the owner of DDA flat No. 2/2216, Sector D, Pocket – II, Vasant Kunj, New Delhi (hereinafter referred to as "the Vasant Kunj property") had executed equitable mortgage in its respect to secure the loan facilities in favour of the borrower. Similarly, Ms. Reena Bhatia being the owner of property bearing No. A-46, the Shanti Garden, Village Ras Nagar, Delhi (hereinafter referred to as "the Shanti Garden property"), executed documents to create equitable mortgage in respect of the said property to secure the loan facilities in favour of the borrower.

6. The borrower having defaulted, the bank instituted the OA in 1996 to recover a sum of ₹1,01,80,015.16 (principal and up-to-date interest) impleading the six persons mentioned above as defendants. The OA was not diligently prosecuted. It came to be dismissed-in-default on 05.02.1998. An application for restoration was moved on 13.03.1998 but for some reasons remained pending consideration.

7. During the pendency of the restoration application on 22.09.2004, the bank invoked the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act") by issuing a notice under Section 13(2) claiming an amount of ₹4,57,55,860/-, which would represent the principal amount and interest calculated upto 30.09.2004.

8. It appears that there was another asset of the borrower also claimed by the bank as secured asset in respect of this very loan account, it being property at 6, 7 and 8, Electronic Complex, Soghi, District Shimla (Himachal Pradesh). It also appears that an order was passed by the DRT in

respect of the third secured asset restraining the defendant owner from alienating or creating any kind of encumbrance in its respect.

9. The application for restoration of the OA was dismissed by the DRT on 12.05.2006. The bank took miscellaneous appeal No. 123/2006 before the DRAT which would eventually be allowed on 05.11.2009 thereby restoring the OA on the file of the DRT for adjudication on merits.

10. Meanwhile on 24.03.2000 (i.e. during the period the application for restoration of OA was pending consideration before the DRT), Ms. Reena Bhatia sold her Shanti Garden property (one of the properties subject to equitable mortgage) to one Mr. Satish Julka, a builder. It appears that the said purchaser Mr. Satish Julka developed the property by constructing residential flats thereupon and, in due course, sold the same to different persons. It appears that upon the factum of the property being subject matter of equitable mortgage coming to the knowledge of the buyers of those flats, a criminal complaint was filed by them against Mr. Satish Julka upon which a First Information Report (FIR) came to be registered. It further appears that in the course of investigation into the said FIR, the said Mr. Satish Julka was arrested.

11. The material on record further shows that, against the above backdrop, Mr. Satish Julka approached the bank for amicable settlement requesting for release of charge over the Shanti Garden property. He submitted a proposal on 06.02.2007, *inter alia*, seeking to explain that he had purchased the property by sale deed dated 24.03.2000 *bona fide* on the understanding that the charge of the bank over the property stood extinguished since the OA for recovery of the outstanding liability had been dismissed by the Tribunal on 05.12.1998.

12. The compromise proposal submitted by Mr. Satish Julka submitted by his letter dated 06.02.2007 to the extent necessary may be extracted as under:-

"...

i) Apropos our previous personal visits through representatives on 18.12.2006 and 05.01.2007 and in addition to various discussions held telephonically, we submit our compromise proposal of ₹1.02 crores herein.

ii) The company M/s. Durha Machines sought credit facilities amounting to ₹48 Lacs (As per the knowledge of undersigned), from your benign bank against which several properties were mortgaged besides hypothecation of plant & machinery & personal guarantee of its directors etc.

iii) The account became bad & a suit for recovery of ₹1002 crores (Approx) was filed before DRT, Delhi in the year 1998, but the same was dismissed by Hon'ble DRT, Delhi on 05.12.1998. However, later on a restoration application was moved which was ultimately dismissed on 12.05.2006 by the DRT and the banks claim was declined by the DRT and thus securities stood absolved.

iv) The registered owner of property No. A-46, Shanker Garden, Delhi Smt. Reena Bhatia approached the undersigned & offered the purchase of said property and produced the certified copies of chain documents & the order of dismissal dt. 05.02.1998 passed in O.A. No. 563/1996, titled as State Bank of Patiala Vs. Durha Machines (P) Ltd. & others and stated that since the suit of the bank is dismissed, therefore the charge of the bank over the property is over & she will hand over the original title documents to the undersigned at the earliest.

v) The undersigned being a layman believed bonafidely the version of said Smt. Reena Bhatia and entered into an agreement to sell with her, who further executed a registered document of Sale Deed dt. 24.03.2000 and handed over the possession of property after receiving agreed consideration amounts paid to her by the undersigned.

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vi) The applicant being a bona-fide purchaser who has handed over the title to Shri Ashok Kumar and Raj Kumar is morally & socially bound to clear title of the said property No. A-46, Shanker Garden, New Delhi & hence this compromise proposal, out of humanitarian & social consideration.

vii) The undersigned is enclosing herewith a Bank Draft for ₹12 lacs plus ₹13 lacs to be deposited by tomorrow i.e. 07.02.2007 which is 25% of total compromise amount to prove his bona-fide intentions for a genuine settlement, which amount be kept in NO LIEN account and should be realized only on acceptance of this proposal.

viii) The undersigned is neither the borrower nor the guarantor, nor the money was in any in way utilized by the undersigned, and as a help to the bonafide flat buyers as the undersigned stood in the shoes of Smt. Reena Bhatia guarantor in the account of M/s. Durha Machines (P) Ltd.

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13. The bank responded by letter dated 28.03.2007 as under:-

"STATE BANK OF PATIALA
STRESSED ASSETS MANAGEMENT GROUP
HEAD OFFICE PATIALA

No. ARB/NJ/KG-5/
Date: March 28, 2007
Shri Satish Julka,

S/o Sh. Roshan Lai
R/0.-5, Narang Colony
Janakpuri, New Delhi-110058.
Cell No. 09810829076
Direct; 09312833802

Dear Sir,

COMPROMISE PROPOSAL:
A/C M/S DURHA MACHINES PVT. LTD.

Please refer to your letter dated the 6th February 2007 on the above-mentioned subject.

We are pleased to inform you that the Bank has approved your offer for OTS in the above said account under Banks Normal Scheme. The approval is without prejudice to Bank's right to recover out dues through other means.

Compromise Amount: ₹ 110.00 lacs (Rupees one crore ten lacs only), which is a distress sale value of mortgaged plot (310 sq. yds.) at Shankar Garden near Janakpuri Distt. Najafgarh, New Delhi in the name of Smt. Reena Bhatia.

Payment Terms: 100% compromise amount I.e. 110 lacs to be paid before 31 March 2007.

Other terms and conditions will be sent separately.

Yours faithfully,
Sd/-

Chief Manager"

14. It appears that the Screening Committee (of HOCC-II) in Stressed Assets Management Group of the Bank misconstrued the request as a proposal of the borrower. At least this is how it described it in its

communication No. GMO/REC/BKG/4932 dated 29.03.2007 addressed to the Chief Manager (Assets Recovery Branch) on the subject. Be that as it may, the letter communicating the approval clarified that the proposal was "for release of one mortgaged property" and that the competent authority had "approved to release (our) charge on one mortgage property i.e. plot measuring 310.00 sq. yds. At Shankar Garden, Janakpuri, Distt. Centre, Najafgarh, New Delhi against payment of Rs. 105.00 Lacs" and further that "the approval is without prejudice to (our) right to recover (our) dues through other means."

15. The bank, thus, accepted the amount of ₹110 Lacs (in two installments) from Mr. Satish Julka as amicable settlement in which context Ms. Reena Bhatia, the guarantor and owner of the Shanti Garden property (subject matter of the mortgage), also executed indemnity bond on 29.08.2007 in the following terms:-

> *"This bond is executed by Ms. Reena Bhatia nee Reena Walia D/o of Sh. Bhupinder Singh Bhatia and wife of Sh. Randeep Singh Aged 35 years resident of A-147, Defence Colony, N. Delhi, in favour of State Bank of Patiala through its Chief Manager, Assets Recovery Branch, Sector 8-C, Chandigarh (hereinafter called the "Bank") on 29th day of August 2007 at Chandigarh.*
>
> *WHEREAS the property described in schedule hereto (i.e. the Shanti Garden property) was owned by the above named Ms. Reena Bhatia was mortgaged by her in the capacity of a guarantor in favour of the bank for securing credit facilities to the firm in the name and style of M/s Durah Machines Private Ltd.*
>
> *AND WHEREAS the said Ms. Reena Bhatia, without redeeming the mortgage transferred the property in favour of Sh. Satish*

Zulka, by way of sale deed.

AND WHEREAS the said Sh. Satish Zulka being a transferer in respect of the schedule property <u>has tendered to the Bank the assessed distress value of the property</u> on behalf of Ms. Reena Bhatia <u>toward part liquidation of the liabilities</u> of Mrs. Reena Bhatia towards the Bank.

AND WHEREAS on the request of Ms. Reena Bhatia, <u>bank has agreed to redeem the mortgage of the scheduled property</u> and has further agreed to <u>deliver back to her the original documents of her title pertaining the property described</u> in the schedule <u>subject to the condition that Ms. Reena Bhatia shall continue to remain liable for the balance amount due to the Bank in the account of M/s Durah Machines Pvt. Ltd.</u>

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16. Upon miscellaneous appeal No. 123/2006 being allowed by DRAT by order dated 05.11.2009, the OA was prosecuted further before the DRT by the bank. In the course of the said proceedings, the petitioners were set *ex-parte*. The OA was allowed by the DRT on 22.03.2010 by *ex-parte* judgment. The petitioners, upon receipt of notice from the recovery officer (in the proceedings taken out for execution of the *ex-parte* judgment dated 22.03.2010) moved miscellaneous application No. 44/2011 before the DRT, *inter alia*, contending want of notice of the restoration application miscellaneous appeal No. 123/2006 or of the proceedings before the DRT thereafter. The application was allowed by the DRT by order dated 30.04.2012 setting aside the *ex-parte* judgment dated 22.03.2010 and re-opening the proceedings on the OA.

17. In the proceedings on OA, post-setting aside of the *ex-parte* judgment, the petitioners brought up the issue of settlement entered into by the bank by

accepting ₹110 Lacs in March, 2007 from Mr. Satish Julka, contending that it was "OTS", in the wake of which the bank was precluded from prosecuting the residual claim under the loan facilities. As noticed earlier, the DRT upheld this contention and dismissed the OA by judgment dated 11.03.2013 but on appeal, the plea was rejected by the DRAT by its judgment dated 19.12.2014 reviving the claim and title of the bank to proceed further for recovery of the balance amount claimed in the OA.

18. The impugned order passed by DRAT shows that it was not impressed with the plea of the petitioners that the settlement entered into by Mr. Satish Julka with the bank was "OTS", in respect of the claim of the bank against the borrower. The Tribunal, *inter alia*, noted that the proposal for settlement was not submitted by the borrower; Mr. Satish Julka who made the said settlement had no concern with the outstanding liability towards the bank which was prosecuting the matter through OA before the competent forum; he also indicated in the proposal that the bank had several properties mortgaged besides the hypothecation of plant & machinery (to take care of remainder of its claim); and that the approval by the bank of the proposal for settlement submitted by Mr. Julka was "without prejudice" to the title of the bank to recover its dues through other modes. The DRAT also noted in the impugned order that the settlement had been reached with Mr. Satish Julka, resulting in release of the mortgaged Shanti Garden property of Ms. Reena Bhatia, at a time when the appeal submitted by the bank for restoration of OA was pending and further that when the proceedings in OA were revived, no such objections were taken by the petitioners and consequently the compromise between Mr. Satish Julka on one hand and the bank on the other had been understood by all concerned as

a settlement restricted to the release only of one of the mortgaged properties.

19. The Reserve Bank of India (RBI) is empowered by the conjoint effect of the provisions of Reserve Bank of India Act, 1934 and Banking Regulation Act, 1949 to exercise supervisory power in the matter of functioning of the scheduled banks. Section 21 of the Banking Regulation Act confers on RBI the power to control advances by the banking companies. By virtue of Section 35A of the said Act, it is also competent to issue directions in the interest of banking policy. For attainment of such purposes, RBI is entitled to issue from time to time guidelines, including in the nature of One-time Settlement Scheme (OSS). In exercise of such power, RBI had issued certain guidelines to be followed by all public sector banks. On 03.09.2005, RBI issued a circular captioned as "guidelines of One-time Settlement Scheme for SME accounts", relevant parts of which may be extracted as under:-

> "...
> *These guidelines will provide a simplified, non-discretionary and non-discriminatory mechanism for one-time settlement of chronic NPAs in the SME sector. All public sector banks shall uniformly implement these guidelines.*
>
> *2. The guidelines will not, however, cover cases of willful default, fraud and malfeasance. Banks shall indentify cases of willful default, fraud and malfeasance and initiate prompt action. Accordingly, guidelines for one-time settlement of dues relating to NPAs of public sector banks in SME sector are given below:*
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> ***(A)Guidelines for one-time settlement of chronic NPAs up to ₹10 Crore***
> ***[i] Coverage***

a) The revised guidelines will cover all NPAs in SME sector which have become doubtful or loss as on March 31, 2004 with outstanding balance of ₹10 crore and below on the date on which the account was classified as doubtful.

b) The guidelines will also cover NPAs classified as sub-standard as on 31st March, 2004, which have subsequently become doubtful or loss where the outstanding balance was ₹10 crore and below on the date on which the account was classified as doubtful.

c) These guidelines will cover cases on which the banks have initiated action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and also cases pending before Courts/DRTs/BIFR, subject to consent decree being obtained from the Courts/DRTs/BIFR.

d) Cases of willful default, fraud and malfeasance will not be covered.

e) The last date for receipt of applications from borrowers will be as at the close of business on March 31, 2006. The processing under the revised guidelines shall be completed by June 30, 2006.

[ii] Settlement Formula – amount
a) NPAs classified as Doubtful or Loss as on March 31, 2004

The minimum amount that shall be recovered under the revised guidelines in respect of one-time settlement of NPAs classified as doubtful or loss as on March 31, 2004 will be 100% of the outstanding balance in the account as on the date on which the account was categorized as doubtful NPAs.

b) NPAs classified as sub-standard as on March 31, 2004 which became doubtful or loss subsequently

The minimum amount that shall be recovered in respect of

NPAs classified as sub-standard as on March 31, 2004 which became doubtful or loss subsequently would be 100% of the outstanding balance in the account as on the date on which the account was categorized as doubtful NPAs, plus interest at existing Prime Lending Rate from April 1, 2004 till the date of final payment.

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20. The petitioners argue that the OSS enforced by RBI on 03.09.2005 as above was non-discriminatory and binding on the bank. It is argued that the bank in the case at hand having entered into "OTS" in terms of the scheme promulgated by RBI had given up the right to prosecute the recovery proceedings for recovery of the remaining of its claim. They urge that permitting proceeding for recovery of the borrower's balance outstanding liability breached the spirit of "OTS" and is discriminatory and, thus, violative of equality clause of OSS. Reliance is placed on the view taken in the case reported as *Sardar Associates and others v. Punjab & Sind Bank and others* (2009) 8 Supreme Court Cases 257.

21. We have considered the submissions of the petitioners but find the facts in the case of *Sardar Associates and others* (supra) are distinguishable. The settlement in that case had been offered under OSS of RBI by the borrower. In contrast, the settlement referred to here was proposed by a third party who had no concern whatsoever with the loan liability or the guarantee furnished therefor. The background facts noted earlier clearly show that Mr. Satish Julka, from whom the bank realized ₹110 Lacs, was constrained to come forward with such money to wriggle out of the criminal accusations that were being leveled against him on account of he having purchased the Shanti Garden property of Ms. Reena Bhatia which had been

later developed into multiple dwelling units that had come to be sold to different persons who were feeling agitated on account of they having been persuaded to acquire interests in a property on which the bank had a charge. The proposal by Mr. Satish Julka clearly shows that it was submitted by him, *inter alia*, as a moral obligation towards the buyers of such dwelling units, his interest being, not to discharge the liability of the borrower, but to get the property purchased from Ms. Reena Bhatia released from the encumbrance. The proposal was considered by the board of the bank only in such light. Even while approving the proposal for acceptance and for being acted upon, the bank made it clear that it was reserving its right to recover the remaining dues through other modes. Noticeably, even the guarantor Ms. Reena Bhatia was not fully absolved of her liability. In the indemnity bond executed by her to facilitate closure for Mr. Satish Julka, she conceded her continued liability towards the creditor.

22. There is no reference in the proposal submitted by Mr. Satish Julka or in the communications sent by the bank in response to the settlement being in terms of the OSS promulgated by the RBI. Though the bank in its communication dated 28.03.2007 to Mr. Satish Julka did describe the settlement as "OTS", it is clear that the arrangement was not under OSS of RBI. It was not a compromise with the borrower. The letter referred to its "Normal Scheme" and not to RBI scheme. That the compromise involving Mr. Satish Julka was restricted to what concerned the Shanti Garden property of Ms. Reena Bhatia is also clear from the terms of the indemnity bond which was submitted by her at the time of such settlement.

23. The petitioners were not a party to the settlement that was arrived at in March, 2007 between Mr. Satish Julka, on one hand, and the bank, on the

other. The said settlement resulted in release of one of the mortgaged properties belonging to Ms. Reena Bhatia who had participated in the process of settlement with Mr. Satish Julka only to get the said third party relieved of the travails he was facing. The bank had reserved its right to pursue the remainder of the claim against the borrowers and guarantors, indeed even by going after the other mortgaged assets, including the Vasant Kunj property. There is nothing in the terms of that agreement absolving the writ petitioner's liabilities. In these circumstances, the said settlement cannot be treated as an "OTS" entered upon by the borrower with the bank and it cannot erode its claim for recovery of the balance dues from the petitioners.

24. Thus, the contentions raised in the writ petition are devoid of substance. The petition is consequently dismissed.

25. The pending applications do not survive and consequently also stand disposed of.

R.K.GAUBA
(JUDGE)

S. RAVINDRA BHAT
(JUDGE)

FEBRUARY 23, 2015
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