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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 8440/2015 & CM No.18082/2015 (for stay)

M/S H.R. MAHAJAN & SONS & ANR ..... Petitioners

Through: Mr. Amit Mahajan with Mr. Sidhartha Das, Advs.

Versus

INDIAN BANK ..... Respondent

Through: Mr. Arshad Chaudhary, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **24.02.2016**

1. The petition impugns the rejection by the respondent Indian Bank vide letter dated 14th July, 2015 of the proposal of the petitioners for settlement of the dues admittedly owed by the petitioners to the respondent Bank. Mandamus is also sought directing the respondent Bank to revive the One Time Settlement (OTS) dated 26th March, 2009 and to receive the balance OTS amount together with delayed period interest @ 10% per annum from the petitioners.

2. Notice of the petition was issued and counter affidavit has been filed by the respondent Bank.

3. The counsels have been heard.

4. The counsel for the petitioners has argued that:

(i) in or about the year 1998 in the proceedings for recovery of money initiated by the respondent Bank against the petitioners, a Recovery Certificate for principal amount of Rs.27.41 lacs with interest was issued by the Debt Recovery Tribunal (DRT) against the petitioner Bank;

(ii) thereafter in accordance with the then OTS scheme formulated by the Reserve Bank of India (RBI), the petitioners applied but no decision was communicated thereon;

(iii) the petitioners in or about the year 2015, upon the petitioners rejoining the recovery proceedings before the DRT which the petitioners had not been attending for the previous few years, learnt that the respondent Bank had in fact under the aforesaid OTS Scheme offered to settle the dues of the petitioners on receipt of a sum of Rs.22.05 lacs;

(iv) since the said offer of the respondent Bank had not been communicated to the petitioners;

(v) the petitioners applied under the Right to Information Act, 2005 and received a copy of the letter dated 26th March, 2009 of the respondent Bank communicating the said offer for settlement on payment of Rs.22.05 lacs but which, at the contemporaneous time, was never served on the petitioners;

(vi) the petitioners immediately on learning thereof vide their letter dated 13th July, 2015 offered to pay the said sum of Rs.22.05 lacs to the respondent Bank with interest at 10% per annum;

(vii) however the said offer of the petitioners has been rejected vide the impugned letter dated 14th July, 2015;

(viii) in fact the respondent Bank in the impugned letter dated 14th July, 2015 has even denied having made any offer for settlement at Rs.22.05 lacs even though the copy of the letter dated 26th March, 2009 in this regard was furnished by the respondent Bank itself to the petitioner under the RTI Act;

(ix) the respondent Bank was bound under the RBI Guidelines and as held in ***Sardar Associates Vs. Punjab & Sind Bank*** (2009) 8 SCC 257 to consider the proposal of the petitioners and though considered and sanctioned a settlement as aforesaid but since did not communicate the same, the petitioners are entitled to accept the same as and when the same was communicated to the petitioners.

5. Per contra, it is the contention of the counsel for the respondent Bank;

(a) that the petition is based on a false premise that the letter dated 26th March, 2009 sanctioning the OTS for Rs.22.05 lacs was not communicated to the petitioners;

(b) attention in this regard is drawn to a letter dated 10th April, 2009 of the petitioners to the respondent Bank expressing inability to abide by the proposal (contained in the letter dated 26th March, 2009);

(c) it is also controverted that the petitioners were unrepresented before the DRT for few years prior to 2015 as is claimed; it is informed that the OTS proposal dated 26th March, 2009 was disclosed in the DRT proceedings as well and the petitioners through their counsel was fully conscious thereof.

6. The counsel for the petitioners on enquiry with respect to the letter dated 10th April, 2009 of the petitioners which has been filed by the petitioners themselves states that though the petitioners do not dispute the

said letter but the petitioners do not remember writing the same also and the copy filed before this Court is the copy of the letter received under the RTI Act as aforesaid.

7. With respect to the absence of the petitioners from the DRT proceedings, no order sheets have been filed by the petitioners and there is no explanation why the petitioners absented themselves from the DRT proceedings for several years. Axiomatically it follows that had the petitioners been participating in the DRT proceedings, they would have been aware of the settlement proposal.

8. I have considered the rival contentions and I am unable to find the petitioners to be having any right to the reliefs claimed in the petition.

9. The petitioners cannot at their whim and fancy choose to repay the dues of the respondent Bank and on their own terms. No advantage of the settlement proposal given by the respondent Bank on 26th March, 2009 can be allowed to be taken by the petitioners after expiry of six years therefrom. The petitioners, in terms of the conditions contained in the said letter dated 26th March, 2009 were required to give their acceptance and deposit Rs.1 lac within seven days, pay Rs.2.50 lac within 30 days and balance Rs.18.55 lacs in eleven equal monthly instalments. The settlement proposal was thus not absolute but a conditional one and the petitioners have admittedly not satisfied the conditions thereof.

10. The petitioners without satisfying the conditions of the settlement proposal cannot seek enforcement thereof. By no stretch of imagination can Supreme Court in ***Sardar Associates*** supra can be construed as holding so.

11. Though the petitioners have failed to establish that the settlement proposal dated 26th March, 2009 was not communicated to them but even if the same were to be believed, the petitioners after making the proposal under a scheme floated by the RBI could not have sat quiet for six years without making any enquiries of the outcome of the proposal. The petitioners by their conduct also are thus disentitled from enforcing the same. The petitioners have clearly not been made out to be ready and willing to abide by the said proposal.

12. There is yet another aspect. The petitioners if not earlier, at least upon receiving copy of the letter dated 10th April, 2009 under the RTI were aware that the proposal dated 26th March, 2009 had indeed been communicated to them. Still the petitioners persisted in pleading that the said proposal had not been communicated to them. It is not the case of the petitioners that the response dated 10th April, 2009 is to some other communication of the respondent Bank. For this reason also the petitioners are found to have approached the Court with unclean hands and are disentitled from the exercise of any discretion or to any equitable relief.

13. The counsel for the petitioners has then argued that since the stand of the respondent Bank in the impugned letter dated 14th July, 2015 of having not made a settlement proposal for Rs.22.05 lacs is apparently fallacious, the petitioners are entitled to the relief.

14. The error if any of the respondent Bank in this regard cannot make the petitioners entitled to a relief to which the petitioners are otherwise not found entitled to in law.

15. There is thus no merit in the petition.

Dismissed.

No costs.

16. The counsel for the petitioners at this stage states that since the rejection by the respondent Bank of the proposal contained in the letter dated 13th July, 2015 of the petitioners is on a wrong premise, a direction be issued to the respondent Bank to reconsider the claim in terms of prevalent policy.

17. Since the offer dated 13th July, 2015 was on the basis of non-communication of the proposal dated 26th March, 2015 and in which respect this Court has found against the petitioners, no such direction can be issued. The petitioners are however free to make a fresh proposal to the respondent Bank and which I am sure the respondent Bank will deal as per its instant policies.

RAJIV SAHAI ENDLAW, J

FEBRUARY 24, 2016

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