

Atul

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 320 OF 2017

Precision Dredging, a partnership firm, through ...Petitioner
their partner Devanand Madhukar Shirodkar

Versus

The State of Goa, through the Secretary ...Respondents
(Finance) & Ors

Mr BP Sardessai, for the Petitioner.

Mr Deep D Shirodkar, for Respondents Nos. 1 & 2.

Mr Purshottam Karpe, for respondent No. 4.

Mr D Pangam, for Respondent No. 5.

**CORAM: G.S. Patel &
Nutan D. Sardessai, JJ.**

DATED: 13th September 2017

PC:-

1. The Writ Petition under Article 226 of the Constitution of India seeks a relief that we believe are quite unable to grant.

2. The Petitioner was indebted to the 4th Respondent, Bank of Baroda. The Petitioner functions out of Goa and undertakes dredging operations. Sometimes, the Petitioner says, its barges are used to transport iron ore and minerals. According to the Petitioner, its barge was used for “mining” since it was transporting iron ore extracted by a process of mining.

3. The Petitioner took credit facilities from the Bank of Baroda in 2007. These were renewed in 2009. There was a term loan of Rs. 2.6 crores which was partly settled.

4. In 2012 the Supreme Court of India passed several orders effectively banning mining activities in Goa. By this time, the Petitioner had run into serious liquidity and credit difficulties. On 31st January 2014 it wrote to the 3rd Respondent, also the Bank of Baroda in its Panaji branch proposing a one-time settlement or OTS. There was no response. On 6th June 2015, the Bank of Baroda from its Vasco unit initiated proceedings under the SARFAESI Act. The Petitioner's accounts were declared as Non Performing Assets. The Petitioner then applied on 6th August 2015 to the Director of Mines and Geology, the 2nd Respondent, for a subsidy under the Debt Relief Scheme as a mining-affected borrower of a financial institution. The 4th Respondent, Bank of Baroda on 12th August 2015 said that dredging was not covered by the subsidy. It asked the Petitioner to regularize its accounts. The Petitioner told the Bank of Baroda that the Screening Committee under the Debt Relief Scheme had favourably considered the Petitioner's proposal for a OTS and renewed its request for reconstruction on the basis that the Petitioners were mining affected borrowers (without which they would not be covered under the Debt Relief Scheme in the first place).

5. On 16th November 2015, Bank of Baroda offered a OTS of Rs. 1,84,56,809/-. We find that this was marked without prejudice. There were several terms and conditions annexed to this.

6. A few months later on 7th January 2016, the Director of Mines and Geology of the Government of Goa wrote to the Managing Director of the 5th Respondent, Economic Development Corporation Limited (“**EDC Limited**”), a nodal agency, regarding the Petitioner’s case and the proposal for an OTS. The Director of Mines and Geology took a view that the Petitioner’s barge was used for dredging, an activity unconnected to mining, and asked the Managing Director of EDC Limited to re-verify whether the barge was actually used for mining or not. It is this communication that is challenged and it is the Petitioner’s case that since the barge was used to carry iron ore, therefore, this is a mining activity and entitles it to not only Debt Relief but to a OTS on that basis. The challenge in this petition is to this communication dated 6th/7th January 2016.

7. We are unable to see how this calls for any interference or how it lends itself to judicial review under Article 226 of the Constitution of India. Prayer (b) is even more remarkable. It asks us to issue a mandamus directing the Respondent to grant a subsidy or a OTS in terms of the 16th November 2015 without prejudice proposal. We can do no such thing. We are in no position to micromanage the affairs of the financial institutions. There are proceedings pending before the SARFAESI that will be directly affected by any such order. It is for the Bank of Baroda to decide of its whether it wants to make a proposal for a one-time settlement and, if so, on what terms. We can certainly not do so. There is no enforceable right, let alone a fundamental right, that can be fairly said to have been violated.

8. As to the question of whether the barge can be said to have been used for mining activity, we are unable to accept the Petitioner's arguments that this lies beyond controversy. Indeed, it does not. The barge could have been used for multiple activities. There seems to be some material to indicate that it was used for dredging. It may also have been used for carriage of iron ore. We cannot examine such disputed questions of fact within the frame of a Writ Petition under Article 226 of the Constitution of India. For, certainly, the barge could have been used for both activities at different times and even if there was a halt in mining activity it was probably possible to use it nonetheless for dredging or for carriage of other goods. If as a matter of fact this was ever done, then this would automatically disentitle the Petitioner from eligibility for an OTS under the Debt Relief Scheme.

9. We see no merit in the petition. It is dismissed.

10. We, however, make it clear that it will be open to the Petitioners to approach the Bank of Baroda for re-visiting the OTS proposal, and which the Bank of Baroda may consider in its own discretion on such terms as it thinks fit. We make it clear that we are not mandating the Bank of Baroda to accept or even to consider any such proposal, but leaving it entirely to the bank's discretion.

(Nutan D. Sardessai, J)

(G.S. Patel, J)