THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS. JUSTICE J.UMA DEVI

WRIT PETITION No.33941 of 2015

ORDER: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

In this writ petition, the petitioners seek a Mandamus to declare the action of the respondent-bank in not accepting their OTS offer by their letter dated 17.05.2010, and the subsequent reminders through their letters dated 11.04.2011, 22.02.2013 and 26.08.2015, for settlement of the dues of Rs.49,37,000/- under the One Time Settlement of SME loan (SBI OTS-SME 2010) dated 09.03.2010, as illegal and arbitrary.

The respondent-bank framed a One Time Settlement Scheme of non-performing assets of small and medium enterprises. Among the salient features of the scheme was that the last date for receipt of applications for One Time Settlement was 31.05.2010, and the last date for final payment was 31.03.2011. Clause (1) of the said scheme dealt with coverage, and Clause 1.6 stipulated that decreed cases were not eligible. Clause (3) related to payment, and Clause 3.2 stipulated that the application would be processed only after deposit of 5% of the eligible amount indicating the borrower's willingness. The petitioners did not pay the 5% processing fee as stipulated under Clause 3.2 of the Scheme. Instead one Sri K. Kuthubuddin furnished an undertaking to the bank on 08.05.2010 that he was depositing Rs.3 Lakhs by way of the Fixed Deposit Receipt dated

25.02.2010; the amount of Rs.3 Lakhs may be adjusted towards processing of the application of M/s Star Granites, Jammalamadugu, who had applied for OTS as per R.B.I. guidelines, and the maturity of the Fixed Deposit may kindly be extended upto 25.07.2010. It is evident from the undertaking that Sri K. Khutubuddin, while seeking extension of the maturity amount of the Fixed Deposit till 25.07.2010, stated that the processing fee could be adjusted therefrom. The very fact that the fixed deposit was required to be extended upto 25.07.2010, long after the last date of receipt of the application on 31.05.2010, makes it clear that the processing fee was not paid by, or on behalf of, the petitioners before the cut off date of 31.05.2010. The petitioners paid Rs.40 Lakhs on 14.09.2010 pursuant to the interim order passed by the Division Bench of this Court. Pursuant to the order of the Division Bench, in W.P.No.19876 of 2010 dated 16.03.2011, the petitioners paid an additional sum of Rs.10 Lakhs by 30.03.2011 which, according to Sri G.K. Deshpande, learned Counsel for the petitioners, is for a total sum in excess of Rs.50 Lakhs, which is more than the total amount payable under the OTS scheme of Rs.47 Lakhs.

In its order, in W.P. No.19876 of 2010 dated 16.03.2011, the Division Bench noted the submission of the learned Counsel for the respondent-bank that, since the amount which this Court had directed the petitioner to deposit by its interim order in WPMP No.25184 of 2010 dated 25.08.2010 had been deposited (a sum of Rs.40 Lakhs), a further amount of Rs.20 Lakhs should be deposited by the petitioners to make use of the benefit of the OTS. The Division Bench, having considered the fact that the petitioners had already paid Rs.40 Lakhs as directed by the Court, directed him to pay a further sum of Rs.10 Lakhs by 31.03.2011 and, on such deposit, the respondent-bank was directed to consider the case of the petitioner for benefit of the scheme of OTS. The Division Bench made it clear that the petitioner should adhere to the terms and conditions of the OTS Scheme.

Pursuant to the aforesaid order of the Division Bench, the respondent-bank, by its letter dated 08.06.2011, informed the petitioner that decreed cases were not eligible for OTS; O.A.No.226 of 2003, filed by the bank before the Debt Recovery Tribunal, had been decreed on 28.09.2007 for a sum of Rs.1,45,72,374/-; as the said decree was still in force, the petitioner was not eligible for the benefit of OTS; the scheme envisaged deposit of 5% towards initial payment as a condition precedent for entertaining any proposal; this had not been complied with by the petitioner who sought the benefit of the scheme; the scheme was not open, as on the date of his representation, for consideration; and even though, by the interpretation of the order of the High Court, M.A.No.53 of 2008 stood restored, still the decree was not in force, which was a bar for considering their proposal.

The application in M.A. No.53 of 2008 was filed to set aside the ex parte decree passed in O.A.No.226 of 2003 dated 28.09.2007. While M.A. No.53 of 2008 stood restored pursuant to the order of the

Division Bench in W.P. No.19876 of 2010 dated 16.03.2011, the ex-parte decree, passed against one the petitioners (3rd defendant in O.A.No.226 of 2003), was set aside only on 05.02.2013, and against the other defendants only on 20.08.2015.

Sri G.K. Deshpande, learned Counsel for the petitioners, would submit that, on the ex-parte decree being set aside and the Suit being restored to file, the earlier *ex parte* decree was no longer in force; consequently, the first objection of the respondent-bank, that the OTS scheme was not applicable to decreed cases, was no longer valid; the undertaking furnished by Sri K. Kuthubuddin satisfied the requirement of payment of processing fee of 5%; the respondent-bank had given an undertaking that the application would be processed on the petitioner paying 20 Lakhsl; and, as the petitioner had paid Rs.10 Lakhs in compliance with the order of the Division Bench, the respondent-bank was obligated to extend the petitioner the benefit of the OTS Scheme.

On the other hand, Sri G.Vivekananda, learned Counsel for the respondent-bank, would submit that the petitioner did not fulfil the condition of the OTS scheme to claim that the benefits of the Scheme should be extended to him; the order of the Division Bench did not obligate the respondent-bank to extend the benefit of the OTS Scheme to the petitioner; it only required them to consider his request; the petitioner's request was considered by the bank; and, by their letter dated 08.06.2011, the respondent-bank informed the petitioner that his request for extension of OTS settlement could not be acceded to.

As noted hereinabove, the last date for submission of applications for claiming the benefit of the OTS scheme was 31.05.2010, and the last date for final payment of the OTS amount was 31.03.2011. Writ Petition No.19876 of 2011 was filed by the petitioner seeking a direction from this Court to set aside the order in I.A. No.428 of 2010 in O.A. No.226 of 2003 dated 30.07.2010, and to declare the petitioner as being eligible for the OTS scheme introduced by the respondent bank. I.A. No.428 of 2010 was an application filed by the petitioner to condone the delay in filing the petition to set aside the order dismissing M.A.No.53 of 1998 for default. M.A.No.53 of 1998 was filed by the petitioner to set aside the ex-parte decree passed in O.A.No.226 of 2003 dated 28.089.2007. The Division Bench had earlier, by its interlocutory order in WPMP No.25184 of 2010 in W.P. No.19876 of 2010 dated 25.08.2010, directed the petitioner to deposit Rs.40 Lakhs within a period of three weeks from the date of the order; by order, in W.P.No.19876 of 2010 dated 16.03.2011, the petitioner was called upon to pay a further sum of Rs.10 Lakhs before 31.03.2011; on such deposit, M.A. No.53 of 2008 was directed to stand restored to file; and the respondent bank was directed to consider the case of the petitioner for the benefit of the scheme.

As noted hereinabove, the Division Bench did not issue a mandamus to the respondent-bank to extend to the petitioner the benefit of the scheme. The direction in the Writ Petition was only to consider the case of the petitioner to be extended the benefit of the OTS scheme. The petitioner was entitled to claim the benefit of the scheme only on compliance with the conditions stipulated therein. The submission that on the ex-parte decree being set aside as against the 3rd defendant (petitioner) on 05.02.2013, and against all others on 20.08.2015, the Suit must be held to be pending and, consequently, it would not constitute a decreed case, is only to be noted to be rejected. As the last date for processing the application was 30.05.2010, and the last date for payment in terms of the compromise was 31.03.2011, the case, before the Debt Recovery Tribunal, continued to remain a decreed case during the relevant period. Even otherwise, the condition prescribed by Clause 3.2, of the OTS Scheme, is for payment of 5% of the eligible amount. This condition has evidently not been complied with as mere furnishing of a fixed deposit receipt of a third party does not amount to deposit of the 5% eligible amount for processing the application fee.

Much stress has been placed by Sri G.K. Deshpande, learned Counsel for the petitioner, on the undertaking stated to have been given by the respondent-bank, to this Court, for the petitioner to make use of the benefit of the OTS Scheme. Reliance is placed by the learned Counsel for the petitioner, on the judgment of the Supreme Court in **Commissioner of Endowments v. Vittal Rao**[1], in this regard. On the other hand, the submission of Sri G. Vivekanand,

[1] (2005) 4 Supreme Court Cases 120

Learned Counsel for the respondent bank, is that a further sum of Rs.20 Lakhs had to be deposited by the petitioner to make use of the benefit of the OTS Scheme. It is not as if this submission of the learned Counsel for the respondent-bank was accepted by the petitioner and a sum of Rs.20 Lakhs was paid. The Division Bench did not also agree with the submission of the learned Counsel for the respondent-bank and, instead, the petitioner was directed to deposit only Rs.10 Lakhs for their OTS application to be considered. Neither can the submission made by the learned Counsel before the Division Bench be said to amount to the consent of the respondent-bank nor has the petitioner complied therewith by depositing Rs.20 Lakhs. In any event, the direction of the Division Bench was only to consider the petitioner's case for being extended the benefit of the OTS scheme. We are satisfied, therefore, that the respondent bank has not committed any illegality in refusing to extend to the petitioner the benefit of the OTS scheme.

In **Vittal Rao**[1] the Supreme Court followed its earlier judgment, in **State of Maharashtra V. Ramdas Shrinivas Nayak**[2], wherein it was held that statement of facts, as to what transpired at the hearing, was conclusive of the facts so stated, and could not be contradicted by affidavit or other evidence. The statement of the learned Counsel for the respondent-bank, as recorded in the order of the Division Bench in W.P.No.19876 of 2010, is that the petitioner should deposit Rs.20 Laksh to make use of the benefit of the OTS

[2] (1982) 2 SCC 463

Scheme. If the petitioner had taken up the offer of the counsel, and had deposited Rs.20 Lakhs, it was then open for him to contend that the submission of the Counsel for the respondent-bank was a tacit consent of the respondent bank to extend to the petitioner the benefit of the OTS scheme, even after expiry of its duration. The said submission has not been acted upon by the petitioner; and instead the order of this Court, directing payment of Rs.10 lakhs, was alone complied with by depositing the said amount on 30.03.2011. The respondent bank cannot, therefore, be said to have committed any illegality in refusing to extend to the petitioner the benefit of the OTS Scheme.

While the petitioners have failed to fulfil the conditions stipulated in the OTS scheme, for their application to be considered, we cannot also ignore the fact that the amount required to be paid, in terms of the OTS scheme, was paid before the last date prescribed under the scheme i.e., 31.03.2011. This Court, in its earlier order in this writ petition dated 05.07.2017, had opined that it would be appropriate for the petitioners to make one last attempt in settling the issue with the respondent bank amicably. The petitioners appear to have been made such a request, and the respondent bank appears to have expressed its willingness to consider their case informing them that, since the decretal amount in the year 2008 itself was Rs.1,45,72,374, the petitioners should substantially increase the amount which they were willing to pay.

Suffice it, therefore, to make it clear that the order now passed by us shall not preclude the respondent bank from considering the petitioners' request for a one-time settlement in case they are willing to substantially increase the amount which they are willing to pay in discharge of their loan.

Subject to the aforesaid observations, the Writ Petition fails and is accordingly dismissed. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

02.08.2017
GSN/KR