

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 24909 of 2018

Decided on : 27.09.2018

Sahib Dayal Gupta and others

..... Petitioners

Versus

State of Punjab and others

..... Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present : Mr. Aalok Jagga, Advocate
for the petitioners.

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AVNEESH JHINGAN, J.

The present writ petition has been filed seeking quashing of letters dated 17.03.2018 (Annexure P-12), 28.03.2018 (Annexure P-18) and 03.09.2018 (Annexure P-15) to the extent that respondent-bank has incorrectly interpreted the One Time Settlement Scheme (OTS) (Annexure P-4). Further, a prayer has been made that the bank be directed to recalculate the OTS amount strictly as per the scheme.

2. State of Punjab, Department of Cooperative Societies through its Secretary, the Registrar Cooperative Societies (Punjab), Chandigarh and the Hindu Cooperative Bank Limited, Pathankot, have been arrayed as respondents No.1 to 3 respectively in the present writ petition.

3. The petitioners availed a loan of ₹ 1 crore from respondent No.3 on 13.08.2005. The loan was to be repaid in 120 equal monthly installments of ₹1.6 lakhs each. In order to secure the loan, land measuring 2 kanals 9 marlas at village Mohalla Khazanchian, Pathankot, was mortgaged.

4. There was a default in repayment of loan and the account was classified as non performing asset (NPA) in April 2008. Respondent No.3 filed a reference of dispute under Sections 55-56 of the Punjab Co-operative Societies Act, 1961.

5. During the pendency of the proceedings, respondent No.3 came out with an OTS Scheme. As per Clause 6 of OTS, 25% of the settlement amount was to be paid on the date of the application. The bank intimated the petitioners vide letter dated 17.07.2017 about the OTS. The offer to settle the account was accepted by the petitioners vide letters dated 01.09.2017 and 16.12.2017. The petitioners asked for the calculation of the OTS amount but the same was not supplied. On 09.01.2018, the petitioners sent their own calculation and according to them ₹ 58 lakhs was the amount for settlement. On receiving no response from the bank, the petitioners filed CWP No.2838 of 2018 in this Court which was disposed of vide order dated 08.02.2018. The relevant portion of the order is extracted below:-

“Having regard to the above-stated plea taken by the petitioners but without expressing any views on merits of their claim, more so when we have not heard the respondent-bank at this stage, the instant writ petition is disposed of with a direction to respondent No.3-bank to consider the proposal said to have been submitted by the petitioners under the OTS Scheme and communicate its decision to them as early as possible and preferably within a period of one month from the date of receiving a certified copy of this order. It will be appreciated if representative of the petitioners is heard by the bank before taking any decision on their offer.”

6. The OTS proposal of the petitioners was rejected by the bank vide letter dated 17.03.2018 without hearing the petitioners. The contempt petition bearing number COCP No.1842 of 2018 was filed by the petitioners. Notice in the contempt petition was issued on 01.08.2018. Thereafter, on 14.08.2018 petitioners again wrote a letter to the respondent-bank stating that the bank has not correctly calculated the OTS amount of more than ₹1 crore.

7. The primary grievance raised in the present petition is that the bank is arriving at a figure of OTS without associating the petitioners.

8. Normally, in view of the fact that this Court earlier in its order dated 08.02.2018 has dealt with the matter and a contempt petition is already pending, this Court would not have interfered in the matter. But keeping in view the fact that the OTS is going to expire on 30.09.2018, and, further, any delay in dealing with the present issue, would adversely affect the petitioners and respondent-bank, we are entertaining the writ petition.

9. Learned counsel for the petitioners contended that the amount of OTS arrived at by the bank of ₹ 1,26,47,143 is arbitrary. In spite of the request made by the petitioners and the order of this Court, the petitioner has neither been heard nor associated. The petitioners want to settle the loan account. Learned counsel for the petitioners has produced cheques amounting to ₹ 31.63 lakhs as payment towards 25% of the amount as claimed by the respondent-bank for OTS. It was submitted that the petitioners are ready to deposit the said amount for consideration of OTS without prejudice to their rights.

10. In spite of the fact that the grievance raised by the petitioners

has a connection with the contempt petition pending, be that as it may, in the interest of justice, keeping in view that OTS is only available upto 30.09.2018, we proceed to examine the lis.

11. After hearing learned counsel for the petitioners and perusing the contents of the petition, keeping in view the totality of facts and circumstances, without expressing any opinion on the merits of the case, the writ petition is disposed of with a direction that the petitioners would file a detailed representation to the bank along with their calculations within 15 days from today. Alongwith the representation, the petitioners would deposit a sum of ₹ 31.63 lakhs without prejudice to their rights. The amount which will be deposited would be considered as initial 25% deposit made by the petitioners towards OTS. The payment made shall be deemed to be paid within stipulated period in the OTS Scheme. On receipt of representation and the payment, the bank shall decide the representation in accordance with law after affording an opportunity of hearing to the petitioners by passing a speaking order. After the decision of the bank, the petitioners shall abide by the terms of the OTS.

11. The learned counsel for the petitioners stated that in view of the order passed today the contempt petition would be withdrawn on the date fixed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

September 27, 2018
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Whether speaking/reasoned: Yes/No

Whether reportable : Yes/No