# HIGH COURT OF CHHATTISGARH, BILASPUR

## WPC No. 1346 of 2019

- M/s. Uphar Jewellers, Through Proprietor Shri Rajesh Soni, S/o Shri Jankilal Soni, Aged About 51 Years, R/o Near Manav Mandir Chawk, District- Rajnandgaon, Chhattisgarh. 491441

**---- Petitioner**

**Versus**

1. Bank Of Maharashtra, Through Zonal Manager, 1st Floor, Chawla Complex, Devendra Nagar, District- Raipur, Chhattisgarh.

2. Chief Manager, Bank Of Maharashtra, 1st Floor, Chawla Complex, Devenra Nagar, District- Raipur, Chhattisgarh.

3. Branch Manager, Bank Of Maharashtra, Bhorka Para, District- Rajnandgaon, Chhattisgarh.

4. State Of Chhattisgarh, Through Collector, District- Rajnandgaon, Chhattisgarh.

**---- Respondents**

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| For Petitioner | : | Shri Amit Buxy, Advocate |
| For Respondents No. 1 to 3 | : | Dr. Saurabh Kumar Pande |
| For Respondent No. 4 /State | : | Shri Sudhir Sahu, Panel Lawyer |

**Hon'ble Shri Justice Goutam Bhaduri, Judge**

**Order On Board**

**24/09/2019**

Heard.

1. The present petition is filed for the following reliefs:-

> 10.1 This Hon'ble Court may kindly be pleased to call for the relevant records from the court below pertaining to the case of the petitioner for its kind perusal leading to passing of the impugned notice.
>
> 10.2 This Hon'ble Court may kindly be pleased to set aside the Possession notice dated 23.03.2019 (Annexure P/2) and letter dated 07.03.2019 (Annexure P/1).
>
> 10.3 That this Hon'ble Court may kindly be pleased to issue a writ and/or an order in the nature of writ of mandamus to direct the respondent bank to abide with the agreement of the OTS scheme thereby settling all the liabilities regarding the loan account and stop recovery

proceedings.

10.4 Cost of the Petition may also be awarded.

10.5 Any other order that this Hon'ble Court deem fit and proper in the facts and circumstances of the case may kindly be passed.

2. The grievance of the petitioner is that the petitioner though had availed a loan and defaulted, however, the petitioner entered into One Time Settlement (OTS) scheme and at the time of OTS an amount of Rs. 50 Lakhs were paid and as per the guide lines issued by the Reserve Bank of India (RBI) the payment of balance amount in suitable installment should have been provided with a maximum one year period. It is contended that at the time of OTS scheme (Annexure P-6) an amount of Rs. 50 Lakhs were paid despite that the bank had not adhered to grant installment to the petitioner and the measure taken under Section 12 of Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) would be illegal. It is stated the huge amount of Rs. 50 Lacs though was paid but was not considered by bank. Consequently, there has been a deviation from the guide lines which has been issued by RBI and the actions of the bank is illegal.

3. Per contra learned counsel for the respondent would submit that the petitioner availed a working capital loan of Rs. 2 crores in the year 2013. It is further stated that for default of repayment according to the forms of the agreement the account became sticky. Consequently, it was turned to be NPA. It is further contended that time was provided to the petitioner on many occasions despite various opportunities granted no payment have been actually made. However, only amount of Rs. 50 Lakhs has been paid at the time of OTS scheme.

4. Be that as it may the document filed along with the return would show that the bank has already preferred the measure under the Securitisation and

Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act). As per Annexure P-6 the OTS Scheme was arrived at 17.12.2018 and the letter Annexure P-6, purports that after payment of Rs. 50 Lakhs further Rs. 1,03,85,748/- was to be paid on or before 31.12.2018. Even if the RBI guide lines as has been highlighted are taken into account, it do not mandate a compulsion; it says that deserving cases, Bank may consider recovering the settlement amount in installments. The query having been made that after 17.12.2018, how much amount has been paid? Categorically, it has stated no amount has been paid. Consequently to show the bona fide of petitioner there should have been repayment to liquidate the account though partially. Nothing is on account to hold in favour of the petitioner that after 17.12.2018 any repayment was made.

5. In view of this, I do not find any merit in this case to entertain this petition. Accordingly, the petition is dismissed. However, the petitioner if so advised may approach to the Bank for settlements and in such case the bank authorities may consider the same according to their permissible guideline.

**Sd/-**
**(Goutam Bhaduri)**
**Judge**

Jyoti