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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No. 561 of 2019

{Arising out of order dated 24.09.2019 passed by the learned Single Judge in WPC No. 1346 of 2019}

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

---- Appellant

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

For Appellant	:	Shri Anshul Tiwari, Advocate.
For Respondents 1 to 3/Bank	:	Dr. Saurabh Pande, Advocate.
For Respondent No.4.	:	Shri Chandresh Shrivastava, Deputy Advocate General.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per, P.R. Ramachandra Menon, Chief Justice

17/12/2019

1. It is reported that the interim order passed by this Court on 02.12.2019 directing to keep the coercive steps in abeyance till the next date of posting, subject to satisfaction of Rs.50 Lacs to the Respondent-Bank towards the part of outstanding dues within 'two weeks', has not been complied with.

2. This appeal arises from the judgment dated 24.09.2019 passed by the learned Single Judge in WPC No.1346/2019, whereby interference was declined with regard to the prayers raised and writ petition was dismissed.

3. Heard the learned counsel for the Appellant as well as the learned counsel for the Respondent-Bank, besides the learned counsel representing the Respondent-Government.

4. The prayers in the writ petition were in the following terms :

> "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."

5. The claim raised by the Petitioner as to the benefit payable under the OTS (One Time Settlement Scheme) and the circumstances under which the Respondent-Bank turned down the claim were highlighted before the learned Single Judge. It is also stated that, it was pursuant to the earnest efforts taken to avail the benefit of the Scheme, that a sum of Rs. 50 lacs was deposited by the Petitioner/Appellant and it was quite unjustified on the part of the Bank to have turned the back on the writ Petitioner, denying the benefits of the Scheme; which made the Petitioner to approach this Court by filing the writ petition with the prayers as aforesaid.

6. The prayers were opposed from the part of the Respondent-Bank and the contention in this regard has been taken note of in paragraph 3 of the judgment. Holding that there was no merit, interference was declined and writ petition was dismissed. The operative portion as given in paragraphs 4 and 5 are in the following terms:

> "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.
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> 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."

This made the writ petitioner to feel aggrieved, who has filed this appeal.

7. When the matter came up for consideration before this Court on 02.12.2019, taking note of the nature of contentions raised, to test the bonafides of the Appellant, we passed an interim order on 02.12.2019 in the following terms:

> "The learned counsel appearing for the Respondent-Bank submits with reference to the grievance projected by the Appellant that, many

> opportunities were given to the writ Petitioner/Appellant to clear the amount covered by the One Time Settlement Scheme ('OTS') and that the Appellant has not remitted even a single pie after granting the benefit vide Annexure A/7 dated 17.12.2018, but for remitting only a sum of Rs.50 Lacs as part of the condition to have considered the matter under OTS (effected on 15.12.2018). Since the Appellant did not pay any heed to the various letters issued by the Bank and was only protecting the matter by submitting various representations, there was no other alternative, but to cancel the OTS and proceed with appropriate steps. It is also stated that, the revenue authorities have also been addressed to proceed with further steps in this regard; adding that, the total amount due from the Appellant as on date is nearly about Rs.1.56 Crore, including interest.
>
> The learned counsel for the Appellant seeks for a last minute opportunity to show the bonafides for clearing the outstanding dues, as pointed out by the Bank, subject to appropriate condition to be imposed by this Court.
>
> In the said circumstance, the Appellant is required to pay/deposit a sum of Rs.50 Lacs to the Respondent-Bank towards part of outstanding dues within 'two weeks' from today. Subject to payment to be effected as aforesaid, the recovery proceeding, if any, shall be kept in abeyance till the next date of posting."

8. Today, it is conceded by the learned counsel for the Appellant that the Appellant could not satisfy the sum of Rs. 50 lacs as ordered by this Court. The learned counsel for the Respondent-Bank submits that, all through out the Appellant was enjoying the interim stay without effecting any payment and no further leniency might be shown to the Appellant in any manner.

9. After hearing both the sides, we are of the view that, despite granting an opportunity to have some relief extended by interdicting the coercive proceedings and enabling the Appellant to liquidate the liability, the opportunity given by this Court was not properly utilized by the Appellant. The direction to effect the deposit of Rs. 50 lacs has not been satisfied.

10. In the said circumstances, no further indulgence is liable to be shown to the Appellant. We do not find any reason to interdict the verdict passed by the learned Single Judge. Appeal fails. It is dismissed accordingly, without prejudice to the rights and liberties of the Appellant to pursue other appropriate remedy, if any, in accordance with law.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	**(Parth Prateem Sahu)**
Chief Justice	Judge

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