HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HONOURABLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION Nos.20272 AND 40747 OF 2018

COMMON ORDER: *(Per Hon'ble Sri Justice V. Ramasubramanian)*

The petitioner has come up with the above writ petitions seeking a direction in the first writ petition to the respondents to receive the demand drafts taken by the petitioner towards full payment of the amounts specified in a One-Time Settlement (OTS) offer and seeking a direction in the second writ petition to the respondents to return the title deeds in respect of the property which was offered as security for the due repayment of the loans.

2. Heard Mr. A. Prabhakar Rao, learned counsel for the petitioner and Mr. A. Krishnam Raju, learned counsel for the respondent bank.

3. It appears that the petitioner is a partnership firm which availed credit facilities from the respondent bank and committed default in repayment of the amounts due. The account was classified as a Non-Performing Asset and measures were taken by the bank for the recovery of the amounts due.

4. By a letter, dated 18.09.2017, the bank offered a OTS, if the petitioner was prepared to pay a sum of Rs.97,67,291/-. The petitioner accepted the same and the bank issued a letter of confirmation on 27.11.2017.

5. The terms and conditions incorporated in the letter dated 27.11.2017 were as follows;

i. that apart from the application money of Rs.6,37,664/- already paid by the petitioner, the petitioner should make a further payment on or before 27.12.2017, which together with the application money would make up 20% of the OTS amount. 20% of the OTS amount was indicated as Rs.19,53,458/-, out of which, the amount of Rs.6,37,664/- already paid was adjusted and the balance required to be paid on or before 27.12.2017;

ii. that the balance 80% of the amount due under the OTS was to be paid on or before 27.05.2018 together with interest at MCLR + 2%;

iii. that if the OTS amount was paid within three (03) months from 27.11.2017, no interest would be payable;

iv. that the petitioner will also be eligible for an additional incentive of 10% discount, if they make payment of the entire amount on or before 31.12.2017.

6. The letter, dated 27.11.2017, issued by the bank made it clear that the OTS sanctioned would become invalid if the terms and conditions were not complied with.

7. According to the petitioner, they managed to mobilize the total amount of the OTS even before 31.12.2017 so that they could

avail the benefit of additional incentive of 10% discount, apart from having the benefit of no interest being charged. It is the case of the petitioner that they submitted an application on 28.12.2017 itself offering to pay the entire OTS amount before 31.12.2017 so that they could avail the discount at 10%. In their letter dated 28.12.2017, the petitioner claims to have sought return of all the original title deeds with which the equitable mortgage was created in respect of the secured assets. But, according to the petitioner, the bank refused to return the documents on the ground that the petitioner was a partner in four other firms which had availed loans and that there were dues from those other firms.

8. Therefore, the petitioner filed a writ petition in W.P. No.155 of 2018. The said writ petition was disposed of by an order dated 30.04.2018, giving liberty to the petitioner to obtain demand drafts for the OTS amount and to pay it on or before 27.05.2018, with a further direction to the bank to return all the original documents, if the retention of the documents was not required in connection with any other loan transaction.

9. It is the case of the petitioner that pursuant to the orders passed on 30.04.2018 in W.P. No.155 of 2018, the petitioner obtained demand drafts for payment of the entire OTS amount and offered the same, but the bank refused to part with the original title deeds. Therefore, the petitioner has come up with the two writ petitions, one

in W.P. No.20272 of 2018 seeking a direction to the bank to receive the demand drafts as per the OTS scheme.

10. It appears that after the filing of the first writ petition, W.P. No.20272 of 2018, a further development took place. The bank issued another OTS offer, dated 21.08.2018, agreeing to take a settlement amount of Rs.89,27,291/-, as against the book outstanding of Rs.1,27,53,273/-. The conditions stated in the said offer, dated 21.08.2018, were as follows:

i. that the petitioner should deposit at least a sum of Rs.4,46,365/- representing 5% of the amount, for processing the application for OTS;
ii. that the petitioner should pay 20% of the amount working out to Rs.17,85,458/-, within thirty (30) days of sanction of the OTS; and
iii. that the petitioner should pay the balance amount within six (06) months from the date of sanction of OTS together with interest at one year MCLR on reducing balance basis.

11. The OTS offer, dated 21.08.2018, also stipulated that no interest will be charged if the entire OTS amount was paid within four (04) months from the date of sanction. The petitioner was also offered additional incentives at the rates of 15%, 12% and 10% respectively if the entire OTS amount was paid within one month or two months or three months according as the case may be. The petitioner was also directed to express willingness before 30.09.2018.

12. The petitioner paid the upfront amount of Rs.4,46,365/- representing 5% of the amount towards processing of the OTS application. This was paid on 21.08.2018 itself. Therefore, the bank gave a letter, dated 04.10.2018, accepting the OTS offer and directing the petitioner to pay the next installment of 20%, *viz.,* Rs.17,85,458/- within thirty days.

13. According to the bank, the petitioner failed to pay the said amount of 20% on or before 03.11.2018 and hence the OTS offer stood withdrawn.

14. But, admittedly, the petitioner gave a letter, dated 26.10.2018 (much before the dead-line for payment of 20% of the OTS amount), requesting the bank to adjust an amount of Rs.24,42,000/- already lying with the bank in a no-lien account. This money was actually paid pursuant to the first OTS offer dated 27.11.2017.

15. The case of the petitioner is that the Officers of the bank informed him that the money paid under the OTS had been adjusted towards interest. The contention of the petitioner is that such adjustment was illegal, as the account had become a Non-Performing Asset and no interest was chargeable.

16. But, the stand taken by the bank in paragraph No.10 of the counter is that the payments made under the OTS Scheme, 2017 cannot be treated as payment under the OTS Scheme of 2018. The

contention of the bank is that the OTS amount under the 2018 Scheme was arrived at, after adjusting the amounts already paid.

17. It is in the background of the controversy that has arisen after the second OTS offer dated 21.08.2018 that the petitioner has come up with the second writ petition, W.P. No.40747 of 2018, seeking a *mandamus* to direct the respondents to receive the amount under the OTS offer, dated 21.08.2018, and to return the original title deeds.

18. Thus, it is seen from the narration of facts that the first writ petition filed in June, 2018 arose out of the controversy that emanated from the OTS Scheme, 2017 and the OTS offer dated 27.11.2017. The second writ petition arises out of the controversy revolving around the OTS Scheme, 2018 and the OTS offer letter dated 21.08.2018.

19. The first writ petition, W.P. No.20272 of 2018, has now become infructuous. The OTS offer, dated 27.11.2017, out of which the first writ petition arose, stood cancelled and a fresh OTS offer, dated 21.08.2018, got substituted in its place. The disputes emanating from the second OTS offer dated 21.08.2018 from the subject-matter of the second writ petition. Therefore, nothing survives for adjudication in the first writ petition, W.P. No.20272 of 2018, hence, it is dismissed.

20. The scope of the controversy in the second writ petition, W.P. No.40747 of 2018, lies in a narrow compass. This OTS offer is for payment of a total amount of Rs.89,27,291/- in three installments.

The first installment of 5% (Rs.4,46,365/-) was required to be paid by 30.09.2018. The second installment of 20% (Rs.17,85,458/-) was required to be paid within thirty days of sanction of OTS. The third installment of the balance of 75% was to be paid within six months from the date of sanction of the OTS.

21. Admittedly, the petitioner paid 5% on 29.09.2018, within the time stipulated in the OTS offer, dated 21.08.2018. Therefore, the bank issued a OTS sanction letter, dated 04.10.2018.

22. Therefore, the petitioner was obliged to pay Rs.17,85,458/- on or before 03.11.2018 and the balance 75%, on or before 04.04.2019.

23. But, the petitioner did not pay the second installment of 20% on or before 03.11.2018. Instead the petitioner sought adjustment of the amounts paid pursuant to the OTS offer, dated 27.11.2017, as against the second installment payable under the OTS offer, dated 21.08.2018. The bank has rejected the same.

24. Therefore, the issue that arises for consideration is as to whether the amount of Rs.24,42,000/- paid by the petitioner pursuant to the OTS offer, dated 27.11.2017, is liable to be adjusted as against the second installment of 20% under the OTS offer, dated 21.08.2018 or not?

25. The issue on hand is not very complicated but simple. Every OTS offer is independent and unique. A OTS offer, under the Law of Contracts, would either be an offer or an invitation to offer, depending

upon how the borrower responds. If the borrower pays 5% of the amount and accepts the OTS offer as such without seeking any modification, the OTS offer may be an offer and the acceptance of the same by the borrower would be an acceptance in terms of the Law of Contracts.

26. But, in cases where the borrower does not accept all the conditions stipulated in the OTS offer and seeks some modification, the OTS offer becomes an invitation to offer and the letter of the borrower becomes the offer. If the offer made by the borrower is accepted by the bank then there becomes a concluded contract in the form of OTS.

27. The OTS offer, dated 21.08.2018, stipulated three conditions. After complying with the first condition, the petitioner wanted a modification of the second condition. This was not accepted by the bank and hence the OTS itself did not come into existence as a contract. Therefore, what the petitioner is seeking to enforce in this writ petition is not a contract but an offer made by him. The Court cannot thrust a One Time Settlement upon the bank on the terms and conditions stipulated by the borrower.

28. There was a gap of nine months from the date of the offer under the OTS Scheme, 2017 and the offer under the OTS Scheme, 2018. The payments made under the first OTS offer, dated 27.11.2017 were already claimed to have been adjusted by the bank. According to the bank, the OTS amount of Rs.89,27,291/- indicated in the OTS

offer, dated 21.08.2018, was fixed after taking note of the payments made till that date. Therefore, the petitioner cannot now compel the bank to modify the OTS amount.

29. The Courts have no power to tamper or tinker with the OTS amounts. The Court cannot forcibly thrust a contract upon two parties. If we are to hold that the amount paid under the 2017 Scheme is to be adjusted against the amount payable under the 2018 Scheme, we will virtually be re-writing the terms of the contract. We cannot do that.

30. Therefore, the second writ petition is devoid of merits, insofar as the second part of the prayer is concerned.

31. The first part of the prayer made in W.P.No.40747 of 2018 is to direct the bank to return the title deeds relating to the secured asset. The cause of action for the petitioner to seek such a relief is that the bank does not want to release the title deeds relating to the secured asset, even if the petitioner had paid the entire amounts due under the OTS scheme without any default. The bank has claimed a general lien over the title deeds on the ground that the partner of the petitioner firm is also a partner in certain other firms which have borrowed money and defaulted in making payments. The question as to whether the bank can exercise a general lien under Section 171 of the Contract Act over the title deeds, without having a charge over the properties or without seeking an attachment before judgment of the properties, may not arise for our consideration in this writ petition, since the OTS has failed and we would not venture to undertake the academic exercise of

finding out whether the retention of the title deeds in the event of the petitioner promptly complying with the OTS sanction is correct or not.

32. Therefore, both the writ petitions fail and they are dismissed. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the writ petitions shall stand closed.

V. RAMASUBRAMANIAN, J

P. KESHAVA RAO, J

March 20, 2019
Mgr