

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.327 of 2020 (O&M)

Date of decision: 23.12.2020

M/s. Milkhi Ram Bhagwan Dass

.... Petitioner

Versus

District Magistrate and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH

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

Mr. D.K. Singal, Advocate
for respondent No.2.

KARAMJIT SINGH, J.

Case has been heard through video conferencing on account of COVID-19 Pandemic.

2. The petitioner has moved this petition seeking writ of mandamus directing respondent No.2 to grant six months' time to it to make the remaining payment as per One Time Settlement (OTS) dated 31.05.2019 (Annexure P-2), with further direction to restrain the respondents from taking physical possession of the mortgaged property of the petitioner.

3. The petitioner is a partnership firm and it availed a loan limit of Rs.1.55 crore from respondent No.2-Bank. Later on, the petitioner defaulted in repaying the loan and its loan account was declared as Non-Performing Asset (NPA) by respondent No.2-Bank on 06.10.2018. The proceedings under Securitization and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter called 'Act of 2002'), were initiated by respondent No.2-Bank against it, which included notice under Section 13(2) of the Act of 2002. Respondent No.2 also filed an application before the District Magistrate, Mansa-respondent No.1 to take possession of the secured assets. To this effect, notice (Annexure P-1) was issued by respondent No.1. Subsequently, the petitioner effected one time settlement dated 31.05.2019 (Annexure P-2) with respondent No.2, as per which, he was to pay Rs.1.29 crore in total to respondent No.2 by 30.11.2019. Pursuant to the said settlement, the petitioner deposited an amount of Rs.51,00,000/- on the following dates:-

Date	Amount
31.05.2019	Rs.27 lakhs
30.06.2019	Rs.8 lakhs
31.07.2019	Rs.10 lakhs
31.08.2020	Rs.2 lakhs
30.09.2019	Rs.2 lakhs
31.10.2019	Rs.2 lakhs
Total	Rs.51 lakhs

4. For the payment of remaining amount, the petitioner was banking upon the assurance given by his son Vikas Goel and his brother-in-law Prem Nath Garg, who were running separate business of Commission Agent Firm by the name of M/s. Bhagwan Dass Vikas Kumar. On 01.09.2019, Prem Nath Garg handed over the keys to his Accountant Bikar Singh. In the absence of both the partners, the said accountant had stolen the cheques and other important documents lying in the locker. A complaint dated 16.09.2019 (Annexure P-3) in

this regard was lodged with the local police. The matter was also reported to the concerned bank, i.e. HDFC Bank. It was found that Bikar Singh-Accountant transferred more than Rs.15 lakhs out of the bank account of M/s. Bhagwan Dass Vikas Kumar through the said stolen cheques. The police failed to take any action in the matter. On this, Vikas Goel filed CRM-M No.49944 of 2019 (Annexure P-5) against his accountant Bikar Singh and one Dalbir Singh, who was helping him. Due to aforesaid unforeseen circumstances, the petitioner was unable to deposit the balance amount of Rs.78 lakhs with respondent No.2 as per One Time Settlement (Annexure P-2). The petitioner made request (Annexure P-8) to respondent No.2 for extension of time to make the payment of balance amount. However, respondent No.2 ignored the said request. Hence this petition was filed.

5. Notice of motion returnable on 31.01.2020 was issued and in the meanwhile, operation of notice Annexure P-1 was stayed, subject to deposit of Rs.20 lakhs by the petitioner with respondent No.2 within a period of three weeks. The said amount was deposited by the petitioner with respondent No.2.

6. In its written reply, respondent No.2 admitted that the loan account of the petitioner was declared as NPA on 06.10.2018 and thereafter one time settlement for an amount of Rs.1.29 crore was effected between the parties, as per which, the settled amount was to be paid in 7 installments on or before 30.11.2019 by the petitioner. However, the petitioner paid an amount of Rs.51 lakhs upto 31.10.2019 and he failed to pay the balance amount of Rs.78 lakhs. It

was prayed on behalf of the respondent that the writ petition be dismissed.

7. We have heard the learned counsel for the parties and gone through the record.

8. Leaned counsel for the petitioner while placing reliance upon the judgment of the Coordinate Bench of this Court in **CWP No.5518 of 2020, 'Anu Bhalla and another vs. District Magistrate and another', decided on 22.09.2020**, submitted that claim for extension of time for payment of balance settlement amount, pursuant to mutually agreed OTS by the borrowers should be considered by the Court, liberally. Learned counsel for the petitioner further argued that in **Anu Bhalla's case (supra)**, the parties effected one time settlement for an amount of Rs.1.60 crores and the borrowers deposited sum of Rs.83.80 lakhs till 29.01.2020, but could not make the payment of balance amount towards the final conclusion of the OTS, due to some unavoidable circumstances. On this, the borrowers filed writ petition seeking extension of time for making the remaining payment to the bank and the said request was allowed by the Coordinate Bench of this Court while passing the aforesaid judgment dated 22.09.2020.

9. Learned counsel for the petitioner further contended that in the case in hand, due to unforeseen circumstances as detailed in the petition itself, the petitioner failed to make the payment of balance amount of Rs.78 lakhs to the respondent No.2. Even during the pendency of the writ petition, he paid another amount of Rs.20 lakhs to respondent No.2. It is further contended that the petitioner is ready

to make the payment of the balance amount within next six months alongwith reasonable interest for the period of delay. Learned counsel for the petitioner further contended that the petitioner has suffered financial losses due to closure of his business on account of the lockdown imposed by the Central Government w.e.f. March, 2020, otherwise, the petitioner would have already paid the balance amount up to June 2020. Learned counsel for the petitioner further argued that the aforesaid OTS was for the betterment of both the parties. In such a situation, the petitioner being a deserving borrower who is willing to clear his loan account should be given one opportunity to do so, by extending the time for making the payment of balance settlement amount.

10. On the other hand, learned counsel for respondent No.2-Bank submitted that no such direction as prayed for by the petitioner could have given by this Court. The petitioner has failed to establish his bonafide to pay the balance amount under OTS. The unavoidable circumstances spelled out by the petitioner in the petition, on account of which, he failed to repay the balance amount, are totally false and frivolous. It is further contended that after January 2020, not even a single penny was deposited by the petitioner to show his bonafide. Learned counsel for respondent No.2 further argued that the petitioner paid only Rs.51 lakhs till 31.10.2019 and he failed to make payment of balance amount of Rs.78 lakhs by the stipulated date, i.e. 30.11.2019, without any plausible explanation. It is further contended that the reliance placed by the counsel for the petitioner on the decision rendered by the Coordinate Bench of this Court in **Anu**

Bhalla's case (supra), is totally misplaced. In that case, more than half of the settled amount was deposited by the borrower, when he committed default in repaying the balance amount. It was further argued that the facts of **Anu Bhalla's case (supra)** are totally distinguishable from the facts of the case in hand. Learned counsel for respondent No.2 while relying upon the judgment of Allahabad High Court in **Union Bank of India and another vs. Anil Kumar Wadhera and others, 2017(8) ADJ 115 (Allahabad)** submitted that once borrower fails to comply with the conditions of OTS within the time specified and there being no order of the Bank to extend the time for deposit, the OTS would fall automatically and it will not be open to the borrower to insist upon the enforcement of such an OTS.

11. We have considered the rival submissions made by the learned counsel for the parties.

12. Admittedly, the petitioner took loan from respondent No.2-Bank and thereafter it defaulted in repaying the same and the loan account was declared NPA. Subsequently, the parties entered into OTS for an amount of Rs.1.29 crore which was to be repaid by the petitioner as under:-

Date	Amount (Rs.)
31.05.2019	27,00,000/-
30.06.2019	8,00,000/-
31.07.2019	10,00,000/-
31.08.2019	2,00,000/-
30.09.2019	2,00,000/-
31.10.2019	2,00,000/-
30.11.2019	78,00,000/-
	1,29,00,000/-

13. There is no dispute regarding the fact that the petitioner paid an amount of Rs.51 lakhs till 31.10.2019 and he failed to make the payment of balance amount of Rs.78 lakhs by the stipulated date, i.e. 30.11.2019. Now, he is seeking extension of time to make the payment of remaining amount of Rs.78 lakhs alongwith interest at nominal rate with regard to the said delayed payment. The petitioner has given the reasons for non-payment of balance amount, in the petition itself. The main reason for the non-payment as per the petitioner was that, this his son and brother-in-law, who were running a separate business, gave assurance to arrange the balance amount of Rs.78 lakhs. However, they failed to arrange the said amount as their accountant, namely, Bikar Singh committed theft of cheques from the locker and misappropriated approximately Rs.16 lakhs from their bank account. In order to establish his bonafide, the petitioner has relied upon documents (Annexures P-3 to P-6) with regard to aforesaid theft and misappropriation of the money by Bikar Singh. However, all these are disputed questions of fact and cannot be entertained in writ jurisdiction.

14. Learned counsel for the petitioner has also placed reliance on **Anu Bhalla's case (supra)** in order to show that time for repayment of the balance settled amount could be extended by the Court in deserving cases. We are of the view that the **Anu Bhalla's case (supra)** is distinguishable from the case of the petitioner in facts and otherwise also. In **Anu Bhalla's case (supra)**, OTS was effected between the borrowers and the bank for Rs.1.60 crore and in compliance of the same, the borrowers deposited a sum of Rs.83.80

lakhs, but could not make the remaining payment. It means that in the referred case, the borrowers deposited more than 50% of the settled amount before they committed default. However, in the case in hand, the borrower effected OTS for Rs.1.29 crore and made payment of Rs.51 lakhs only when it defaulted. So, in the present case, the amount paid was just 40% of the settled amount. Also in this case, reasons put forth by the petitioner for failure to pay the balance amount, are not plausible. So the petitioner cannot take any benefit of the judgment rendered in **Anu Bhalla's case (supra)**.

15. The Division Bench of Allahabad High Court in **Union Bank of India case (supra)** has clearly held that no separate orders are required to be passed in the matter of the OTS having become defunct for non-compliance of its conditions by the borrowers and the logical consequence in case of breach of the terms and conditions of the OTS is that the Bank becomes free to recover the money outstanding in accordance with law irrespective of the OTS.

16. In the light of the above, we are of the view that the petitioner itself effected OTS (Annexure P-2) for an amount of Rs.1.29 crore with respondent No.2-Bank and agreed to pay the entire amount in seven installments within a period of six months upto 30.11.2019. So, as per OTS, sufficient time was available with the petitioner to repay the settled amount. The petitioner has failed to convince this Court that he failed to pay the balance amount within the stipulated period due to the reasons beyond his control. The petitioner has also failed to show his bonafide intent to make the payment of balance amount.

17. In view of the aforesaid reasons, we are of the view that no ground is made out for this Court to interfere in the matter.

18. Accordingly, this writ petition is hereby dismissed, being devoid of merits. However, the petitioner is at liberty to avail the appropriate remedy available to it under the law. The petitioner is also at liberty to approach respondent No.2-Bank under the new OTS scheme, as and when it comes into force.

19. Since the main case itself has been disposed of, no order(s) are required to be passed in the pending miscellaneous application(s) and the same stand(s) disposed of.

**(RAJAN GUPTA)
JUDGE**

**(KARAMJIT SINGH)
JUDGE**

23.12.2020

Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No