In the High Court of Punjab and Haryana at Chandigarh

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CWP No.6809 of 2021

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Date of Decision:10.12.2021

Amit Mahajan and another **.....Petitioners**

Vs.

Punjab National Bank and others **.....Respondents**

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Coram: Hon'ble Mr. Justice M.S. Ramachandra Rao
Hon'ble Mr. Justice Jasjit Singh Bedi

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Present: Mr. Pankaj Gupta, Advocate for the petitioners.

Mr. C.S. Pasricha, Advocate and Mr. Kamal Dev, Advocate for respondent No.1-Bank.

Mr. Deepak Malhotra, Advocate for respondent No.3.

Mr. Rajinder Singh, Advocate for respondents No.4 to 6.

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M.S. Ramachandra Rao, J.

The background facts

The petitioners along with other co-borrowers had availed various credit facilities in 7 loan accounts from the 1st respondent.

They mortgaged their residential House No.3471, Sector 37-D, Chandigarh, measuring 169 sq. yards to the said Bank for providing the said facilities.

Apart from this property, they also mortgaged three plots situated in Village Chanalon, Tehsil Kharar, District S.A.S. Nagar (Mohali).

The loan account of the petitioners was declared as Non Performing Asset (for short – 'NPA') in 2016 and notices under Section 13(2) of the

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 (hereinafter referred to as `SARFAESI Act') were issued on 23.06.2016 to the petitioners demanding ₹22,11,470/- within 60 days.

In 2017, the petitioners had paid a sum of ₹18.05 Lacs to the 1st respondent by way of demand drafts with regard to four of the loan accounts.

The OTS scheme 2020-21 dt.9.9.2020 introduced by the 1st respondent

Subsequently, the 1st respondent-Bank introduced a new One Time Settlement Scheme (for short - 'OTS Scheme') for the financial year 2020-21 in respect of NPA accounts upto ₹5 Crores vide circular No.38/2020 dt. 09.09.2020, which OTS Scheme was to be in force upto 31.03.2021.

Petitioners' application for OTS dt.14.9.2020/15.10.2020

After the said Scheme came to the knowledge of the petitioners, they made a representation vide email dt. 14.09.2020/15.10.2020 for consideration. They also requested that a sum of ₹18.5 Lacs already deposited by them earlier be treated as part of the aforesaid amount to be payable under the OTS Scheme dt. 09.09.2020 framed by the Bank.

Reply dt.19.9.2020 of 1st respondent

The 1st respondent-Bank then wrote back on 19.10.2020 to the petitioners that the latest outstanding was ₹481.52 Lacs plus interest from the date of NPA till date and the OTS amount payable would be ₹281.15 Lacs. The petitioners were requested to contact the office of the 1st respondent with the upfront amount for consideration of OTS of their account.

Letter dt.3.11.2020 of 1st respondent to petitioners

Subsequently, vide letter dt. 03.11.2020, the 1st respondent-Bank informed the petitioners that out of the upfront amount of ₹43.95 Lacs, the petitioners have deposited only ₹7.50 Lacs during previous OTS proposal and therefore, they should pay the remaining upfront amount of ₹36.45 Lacs. It mentioned in the said letter that *till the loan accounts were resolved through payment of entire outstanding dues or through OTS, all recovery action will be continued as per process of law.*

Contentions of petitioners

The petitioners contend that they met the officers of the 1st respondent-Bank on several occasions and apprised them that they have deposited a sum of ₹18.50 Lacs with the Bank earlier towards earlier OTS proposal and the said amount should be adjusted towards upfront amount of ₹43.95 Lacs payable under the new OTS Scheme. They undertook to deposit the balance upfront amount of ₹25.5 Lacs after adjusting the amount of ₹18.50 Lacs at the earliest and in any case before March 31, 2021, i.e. the last date of operation of the OTS Scheme.

The petitioners allege that the Bank did not inform them about its decision whether or not it would be ready to adjust the amount of ₹18.50 Lacs deposited by them towards the earlier OTS proposal.

The sale of the residential property of petitioners by 1st respondent on 8.1.2021

The 1st respondent-Bank then put the residential house of the petitioners to public auction vide Sale Notice dt. 18.12.2020 (Annexure-P.6) proposing to sell the property on 08.01.2021.

Other contentions of petitioners

The petitioners contend that this action of the respondent-Bank in putting the said residential property to sale when the petitioners had time to deposit the OTS amount by 31.03.2021, as per new OTS Scheme dt. 09.09.2020 floated by the Bank is arbitrary, illegal and unsustainable.

It is also contended that the market value of the property in question was far in excess of the reserve price of ₹1.66 Crore and no proper valuation was done by the Bank before issuing the sale notice.

On 15.01.2021, the Bank informed the petitioners that the said property was sold by e-auction held on 08.01.2021 for ₹1,67,60,000/- i.e., about 1% above reserved price of ₹1.66 Crore.

Securitization Application No.27 of 2021 and orders passed therein

The petitioners filed a Securitization Application No.27 of 2021 before the Debts Recovery Tribunal-II, Chandigarh (for short -'DRT') challenging the said action of the Bank under Section 17 of the SARFAESI Act.

On 08.02.2021, the Presiding Officer of the DRT, Chandigarh, issued notice of the SA to the Bank, but refused to stay the auction proceedings on the ground that the OTS Scheme did not permit deposit of upfront amount till 31.03.2021 and the Bank had indicated in its letter dt. 03.11.2020 that it will proceed with the recovery action as per the process of law.

The petitioners then filed a review application to review the said order dt. 08.02.2021.

The review application was also dismissed on 16.03.2021.

Thereafter, the Bank put the other secured assets, i.e., 3 plots situated in Tehsil Kharar, District S.A.S. Nagar (Mohali) for sale under the provisions of the SARFAESI Act vide Sale Notice dt. 12.02.2021.

According to the petitioners, the Bank had not received any bid and their sale has not yet materialized.

The present Writ Petition

On 22.3.2021, the petitioners filed this Writ Petition contending that they will deposit balance OTS amount after deducting ₹18.50 Lacs already paid by them to the 1st respondent-Bank in the earlier OTS proposal within the time stipulated in the OTS Scheme and, therefore, a direction be issued to 1st respondent-Bank to settle the loan accounts of the petitioners, as per its OTS Scheme dt. 09.09.2020, since the petitioners were admittedly eligible under the said Scheme; and to quash the order dt. 17.03.2021 passed by the Tehsildar, informing about taking physical possession of the residential property of the petitioners on 24.03.2021.

Events after filing of the Writ Petition

On 23.03.2021, in this Writ Petition, notice of motion was issued and on that day counsel for the 1st respondent-Bank made a submission that if the amount of OTS is deposited on that day itself, the proposal of the petitioners would be considered and a speaking order would be passed and the proposal to take possession of the property would be kept in abeyance till the next date of hearing.

The petitioners deposited ₹36,45,000/- on 23.3.2021, which together with the ₹7.5 Lacs admitted to have been deposited by them with it *previously, would amount to deposit of the total upfront payment of ₹43.95 Lacs before 31.3.2021.*

When the matter was next listed on 31.03.2021, this Court directed maintenance of status quo regarding further proceedings.

CM No.6088-CWP-2021

Subsequently, CM No.6088-CWP-2021 was filed by the auction purchasers to implead them as parties in the Writ Petition. The said application was allowed on 26.10.2021.

The Stand of the 1st respondent and consideration of the same by the Court

It is the contention of the 1st respondent-Bank in the reply filed by it that a reasoned order was passed on 30.03.2021 by the Bank rejecting the petitioners' OTS proposal and copy of the said order was annexed as Annexure-R.1 to the reply of the 1st respondent-Bank.

It is admitted that the petitioners had deposited ₹36,45,000/-on 23.03.3021, which together with the ₹7.5 Lacs already lying with it, indicated that the petitioners had deposited a total upfront amount of ₹ 43.95 Lacs.

But it is contended that the residential property of petitioners in Sector 37-D, Chandigarh, had already been sold in e-auction on 08.01.2021 for ₹167.40 Lacs, that the auction purchasers had already deposited 25% initial amount, and for deposit of remaining 75% amount, extension was granted to him by the competent authority, as per the SARFAESI Act.

It is stated in the said letter dt.30.3.2021 that the auction purchasers had deposited the remaining 75% amount of sale consideration 25.03.2021 and sale certificate was also issued to them *subject to the outcome of this Writ Petition.*

Before we deal with the contentions of the 1st respondent, we may point out that the OTS Scheme itself had been introduced on account of the losses to business enterprises on account of Covid-19 pandemic and the extra-ordinary situation which had adversely affected business operations. It was an ameliorative measure to help business entities to recover from the consequences of the pandemic and it is pursuant to special initiative taken by the Union of India as well as Reserve Bank of India in that regard.

We shall now deal with the contentions of the 1st respondent Bank.

(A) In the letter dt.30.3.2021, it is stated by 1st respondent that OTS under the Special OTS Scheme dt. 09.09.2020 of the Bank would be considered as per eligibility (of petitioners) as on the date of proposal i.e. 23.03.2021.

The said plea cannot be countenanced because:

(i) the OTS scheme makes it clear that the Scheme would be valid upto 31.03.2021 in respect of NPA accounts upto ₹5 Crores as on 31.3.2020. If the scheme is applicable to NPA accounts upto ₹5 Crores *as on 31.3.2020*, the 1st respondent Bank cannot arbitrarily change the date of eligibility *to 23.3.2021*, the date when the OTS proposal was allegedly made according to the 1st respondent.

(ii) in it's letter dt.19.10.2020 addressed to petitioners the 1st respondent did not dispute that the petitioners are eligible under the OTS policy dt.9.9.2020 and had itself told petitioners that it would consider their case for an OTS if they deposit the upfront amount.

Having said so on that date, and when the petitioners deposited the entire upfront amount on 23.3.2021 *prior to* 31.3.2021, the last date for claiming the benefit of the OTS scheme, it is not open to the 1st respondent to say it will consider petitioners' eligibility only as on 23.3.2021.

(iii) In fact we are of the view that the OTS offer of the petitioner cannot be treated as having been made on 23.3.2021 at all as is being contended by the 1st respondent Bank. The petitioners' offer for consideration of their case under the OTS Scheme had been made on 14.09.2020/15.10.2020, and not on 21.3.2021.

On account of the 1st respondent not clarifying as to whether it would treat the previous deposit of ₹18.5 Lacs as payment towards the upfront payment of ₹43.95 Lacs, the matter could not proceed further.

(B) The 1st respondent further took a stand that the residential house which was sold by it in the auction held on 08.01.2021 cannot become part of the OTS calculation.

We do not agree with this contention because:

(i) the petitioners' offer for consideration of their case under the OTS Scheme had been made on 14.09.2020/15.10.2020 (*before 31.03.2021)*, and the sale of the secured assets had occurred on 08.01.2021 *after* the petitioners' offer for OTS had been made, during the currency of the Scheme of the OTS which was valid upto 31.03.2021.

The Supreme Court of India in **Ramana Dayaram Shetty v. The**

International Airport Authority of India and others[1]**, ,** held that it is well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them.

Having regard to the said principle of law, it is not open to the 1st respondent-Bank to deviate from the terms of the OTS Scheme framed by it on 09.09.2020, which was valid till 31.03.2021 and unilaterally and arbitrarily contend that though the petitioners' application for OTS was made on 14.09.2020/15.10.2020 and though the petitioners had deposited an entire upfront payment before 31.03.2021, the residential house property put to auction on 08.1.2021 for ₹1,67,60,000/- in favour of the auction purchasers would not become part of the OTS calculations.

(C) It is also the stand of the Bank that it had informed the petitioners on 03.11.2020 about the upfront amount payable by them, but they did not give their offer or make any upfront payment and so it was entitled to proceed for recovery in accordance with law as per the terms of the said letter.

This plea of the 1st respondent is untenable because the 1st respondent could not have imposed any such condition in the said letter contrary to the OTS scheme which was valid upto 31.3.2021.

In our opinion, it was obligatory on it's part to wait till 31.03.2021 to see whether the petitioners would comply with the terms of the OTS by that date by depositing the upfront amount before 31.3.2021 since it is not

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1 **AIR 1979 SC 1628**

disputed that they were eligible for consideration under the OTS scheme if they were to deposit the same before the cut off date of 31.3.2021.

The stand of the Bank that it had informed the petitioners on 03.11.2020 about the upfront amount payable by them, but they did not give their offer or make any upfront payment and so it was entitled to proceed for recovery in accordance with law as per the terms of the said letter therefore cannot be countenanced.

If the stand of the 1st respondent-Bank is to be accepted then it would be theoretically possible for the 1st respondent-Bank to announce OTS Policy on 09.09.2020, which was valid upto 31.03.2021, say that the borrower has to make the payment on 10.09.2020 or any other short date, and in default of the such payment, proceed to sell the secured assets under the provisions of the SARFAESI Act, thereby rendering the cut-off date of 31.03.2021 fixed under the Scheme virtually meaningless.

It is not open to 1st respondent-Bank to scuttle the said Scheme by interpreting in this arbitrary way.

(D) The next contention of the 1st respondent-Bank is that because the OTS Scheme was enforceable till 31.03.2021, it does not mean that the recovery action of the Bank would be spared in all cases, even where there are no offer.

We do not agree with the said plea for the reason that in the instant case the petitioners had come forward even by 14.09.2020/15.10.2020 for consideration of their case under the OTS Scheme on 09.09.2020 and had been corresponding with the Bank regarding adjustments of the sum of

₹18.50 Lacs already deposited by them with the Bank under the earlier OTS towards upfront payment required to be made under the Special OTS Scheme on 09.09.2020.

In any event, once they complied with the making of the full and upfront payment before 31.03.2021, any action taken by the 1st respondent-Bank to sell residential property cannot be said to be final, particularly, when it is admitted, that the sale certificate issued is subject to the result in this Writ Petition.

So the reasons assigned in the speaking order dt. 31.03.2021 passed by the 1st respondent are arbitrary and the said order is declared as arbitrary, illegal and violative of Art.14 of the Constitution of India and is set aside. The 1st respondent Bank has ignored the OTS scheme and the circumstances in which it was framed and has acted contrary to it.

Coming to the stand of the auction purchasers, their stand essentially is that when the interim relief was not granted by the Debt Recovery Tribunal (for short - 'DRT') in SA No.27 of 2021, the only remedy open to the petitioners was to approach the Debt Recovery Appellate Tribunal (for short - 'DRAT') and the petitioners could not have invoked the extra-ordinary remedy under Article 226 of the Constitution of India.

Reliance has been placed by them on the decisions of the Supreme Court in **State Bank of Travancore and another** **v.** **Mathew K.C.**[2], , **United Bank of India v. Satyawati Tandon**[3] **and** **ICICI Bank v. Umakanta Mohapatra**[4] **.**

[2] (2018) 3 SCC 85
[3] (2010) 8 SCC 110
[4] (Civil Appeal No.10243-10250 of 2014 dt. 5.10.2018).

Ordinarily, no doubt Writ Petitions may not be entertained by this Court in regard to actions taken by secured creditors under the SARFAESI Act,2002, but where the actions of the secured creditor are patently arbitrary and unreasonable and are in violation of Art.14 of the Constitution of India, a Writ Petition cannot be said to be not maintainable (as held in **Whirlpool Corporation v. Registrar of Trade Marks**[5] which was also followed in **ABL International v. Export Credit Guarantee Corporation**[6]**).**

It is also not denied by any of the parties that there is no Presiding Officer in the DRAT at New Delhi presently. So it is not possible for the petitioners to avail the said remedy.

The petitioners have been already held eligible under the Special OTS Scheme dt. 09.09.2020 by the 1st respondent-Bank and admittedly they have deposited the entire upfront amount under the said Scheme before 31.03.2021, the last date of the Scheme. Once this Court is of the opinion that the action of the 1st respondent-Bank in putting the residential property of the petitioners to sale on 08.01.2021 itself is illegal, said sale as well as sale certificate are liable to be set aside. The auction purchasers would be entitled for the refund of the total sale consideration paid with reasonable amount of interest.

The conclusion

Accordingly, the Writ Petition is allowed; the order dt.31.3.2021 passed by the 1st respondent is set aside; the sale held on 8.1.2021 of the residential property of the petitioners as well the sale certificate issued to

[5] (1999) 8 SCC 1
[6] (2004) 3 SCC 553

the auction purchasers (respondent Nos.4 to 6) by 1st respondent on 26.3.2021 are set aside; the letter dt. 17.03.2021 issued by the Tehsildar, Una to the Senior Superintendent of Police, Union Territory, Chandigarh (Annexure-P.12) as also the order passed by the Deputy Commissioner-cum-District Magistrate, Union Territory, Chandigarh on 14.03.2017 are both set aside; a Writ of Mandamus is issued to the 1st respondent to settle the loan account of the petitioners under said Scheme subject to the petitioners' complying with the terms of the said Scheme and making the payments as per the time schedule mentioned in the said Scheme; and the sale consideration of ₹1,67,60,000/- deposited by respondents No.4 to 6 with the 1st respondent-Bank shall be refunded to them with interest @ 6% per annum from the date of said deposit till the date of repayment, and said repayment shall be made by the 1st respondent-Bank to respondents No.4 to 6 within 15 days from the date of receipt of certified copy of this order. No costs.

(M.S. Ramachandra Rao)
Judge

(Jasjit Singh Bedi)
Judge

December 10, 2021.

hsp

NOTE: Whether speaking/reasoned: Yes

Whether reportable: Yes