

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Original Side)

APO 44 of 2022
With
WPO 1916 of 2022
IA No. GA 1 of 2022

Reserved on: 08.07.2022
Pronounced on: 28.07.2022

Fairdeal Supplies Limited & Ors.

...Appellants

-Vs-

Indian Overseas Bank & Ors.

...Respondents

Present:-

Mr. Jayanta Kumar Mitra, Sr. Advocate
Mr. Suvasish Sengupta,
Mr. Debdut Mukherjee,
Mr. Kaushik Banerjee,
Ms. Rashmita Sen, Advocates

... for the appellants

Mr. R. K. Jha,
Mr. M. Thakur, Advocates

... for the respondents

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. This intra-court appeal is at the instance of the writ petitioner challenging the order of the learned Single Judge dated 5th of April, 2022 whereby WPO 1916 of 2022 has been disposed of without granting any relief.

2. Appellant had filed the writ petition with the plea that he had obtained the cash credit and term loan facilities from the respondent No. 1 bank in 2005-2006 and the said facilities were enhanced from time to time and the appellant had business losses, therefore, default was committed and negotiation for OTS had started and in that process bank had sent the communication dated 12th of March, 2020, sanctioning the OTS for an amount of Rs. 16 crores for full and final settlement subject to certain terms and conditions. The appellant had paid certain amount in pursuance to the said letter and vide communication dated 29.09.2020 had made a request to the bank to extend the revised repayment schedule. Meanwhile, the bank had issued the show cause notice to the appellant No. 1 and its directors alleging that the appellants were willful defaulter. The appellant had given reply to the notice and thereafter had approached the writ Court with the prayer to command the respondent to act upon the OTS as also to set aside the notice classifying the appellant as willful defaulter.

3. Learned Single Judge in the order under appeal has taken the view that the bank had taken the commercial decision not to accept the offer of the appellant. Before the learned Single Judge, bank had proposed to refund the upfront amount of Rs. 1.5 crores paid by the appellant in support of the offer. Learned Single Judge found that refund of upfront amount paid by the appellant in support of the OTS offer cannot be linked to the proceedings under the willful defaulter guidelines and the same is not appearing on the willful defaulter proceedings. Learned Single Judge has also reached to the conclusion that acceptance or non-acceptance of OTS is an exclusively commercial decision of the bank

and cannot be interfered with in the writ jurisdiction and that the relations between the parties are purely in the realm of private contract.

4. Learned Counsel for the petitioner placing reliance upon the judgment of the Punjab and Haryana High Court in the matter of **Anu Bhalla and Another vs. District Magistrate, Pathankot and Another** reported in **2020 SCC OnLine P&H 4387** has submitted that the respondent bank is bound by its letter dated 12.03.2020 in respect of the OTS offer, hence the conclusion of the learned Single Judge is not correct. He has further submitted that acceptance of the OTS by the bank will be in the public interest as the bank will receive the amount and also submitted that the appellant is ready to give fresh offer.

5. As against this, learned Counsel for the respondent bank has supported the order of the learned Single Judge.

6. Having heard the learned Counsel for the parties and on perusal of the record, it is noticed that the OTS offer dated 12.03.2020 has been cancelled by the bank and undisputedly the upfront amount has been refunded to the appellant. It is the settled position of law that OTS cannot be claimed as of right and a writ of mandamus cannot be issued to the bank to positively consider the grant of benefit under the OTS as the same is always subject to fulfilling the eligibility criteria mentioned in the scheme. Acceptance of the OTS lies within the domain of conscious decision of the bank and bank cannot be compelled to accept a lesser amount under the OTS scheme when it has the option to recover the entire loan by auctioning of the assets. Hon'ble Supreme Court in the matter of **Bijnor Urban Cooperative Bank Limited, Bijnor and Others vs. Meenal Agarwal and Others** reported in **2021 SCC OnLine 1255** in this regard has summarized the position as under:

“30. The sum and substance of the aforesaid discussion would be that no writ of mandamus can be issued by the High Court in exercise of powers under Article 226 of the Constitution of India, directing a financial institution/bank to positively grant the benefit of OTS to a borrower. The grant of benefit under the OTS is always subject to the eligibility criteria mentioned under the OTS Scheme and the guidelines issued from time to time. If the bank/financial institution is of the opinion that the loanee has the capacity to make the payment and/or that the bank/financial institution is able to recover the entire loan amount even by auctioning the mortgaged property/secured property, either from the loanee and/or guarantor, the bank would be justified in refusing to grant the benefit under the OTS Scheme. Ultimately, such a decision should be left to the commercial wisdom of the bank whose amount is involved and it is always to be presumed that the financial institution/bank shall take a prudent decision whether to grant the benefit or not under the OTS Scheme, having regard to the public interest involved and having regard to the factors which are narrated hereinabove.

31. In view of the aforesaid discussion and for the reasons stated above, we are of the firm opinion that the High Court, in the present case, has materially erred and has exceeded in its jurisdiction in issuing a writ of mandamus in exercise of its powers under Article 226 of the Constitution of India by directing the appellant-Bank to positively consider/grant the benefit of OTS to the original writ petitioner. The impugned judgment and order passed by the High Court is hence unsustainable and deserves to be quashed and set aside and is accordingly quashed and set aside.”

7. In view of above position of law, submission of learned Counsel for the appellant based upon the judgment of Punjab and Haryana High Court in the matter of **Anu Bhalla and Another (supra)** to direct the respondent bank to accept the OTS cannot be allowed.

8. Hence, we find no error in the order of the learned Single Judge. However, if the appellant submits any fresh offer it will be always open to bank to consider it in accordance with law.

9. The appeal is accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
28.07.2022

PA(SS)

(A.F.R. / N.A.F.R.)