

HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.21417 of 2014 & W.P.(C) No.1117 of 2015

1. W.P.(C) No.21417 of 2014

***M/s. Seema Granites,
Sundargarh***

.... *Petitioner*

Mr. Bidyadhar Pradhan, Advocate

-versus-

Union of India and Others

.... *Opp. Parties*

Mr. Himanshu Patnaik,

Advocate for Caveator

Mr. Ramakanta Sarangi,

Advocate for intervenor

2. W.P.(C) No.1117 of 2015

***Saroj Kumar Panda and
Others***

.... *Petitioners*

Mr. Ramakanta Sarangi, Advocate

-versus-

***Stressed Assets
Management Branch
(SAMB), S.B.I., Pandit
Jawaharlal Nehru Marg,
Bhubaneswar, District-
Khurda and Others***

.... *Opp. Parties*

Mr. Himanshu Patnaik,

Advocate for Opposite Party Nos.1 &2

Mr. Bidyadhar Pradhan,

Advocate for Opposite Party No.3

CORAM:

JUSTICE JASWANT SINGH

JUSTICE M.S. SAHOO

ORDER

01.12.2022

(Hybrid Mode)

Order No.

- 10.** 1. The aforementioned two Writ Petitions are clubbed together as they arise out of dispute

concerning the same mortgaged immovable property located at Mouza- Bhojpur under Khata No.65/89, Plot No.86, Area Ac.0.283 decimal and Mouza- Kuchinda, under Khata No.404/36, Plot NO.921/2154, area Ac.0.06 decimal, PS/Dist-Sundergarh.

2. For the sake of clarity, we would deal with the brief facts of the aforementioned Writ Petitions separately.

(i) Brief facts of W.P.(C) No.21417 of 2014

(a) The petitioner in this Writ Petition i.e. M/s. Seema Granites represented through its proprietor Smt. Seema Manjari Patel availed loan facilities of Rs.75,00,000/- (Rupees Seventy Five Lakhs) in the year 2009 from State Bank of India/Opposite Party No.3. Due to financial indiscipline, the loan account was classified as NPA on 15th April, 2010. The O.P. No.3/ SBI filed an application before DRT, Cuttack under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 to seek recovery of loans.

(b) On 7.05.2014, the petitioner filed an OTS proposal before the Bank which was accepted on 17.07.2014 with certain conditions. The relevant portion of the mutually accepted OTS proposal letter is reproduced below:

“With reference to your letter dt 07/05/2014, offering to settle the dues of the captioned account throughout OTS at Rs.0.50 Crs, we advise that the appropriate authority of the Bank has approved OTS at Rs.0.55 crs on the following terms and conditions:

*(i). **Total amount payable under the settlement will be Rs.0.55 crores (Rupees fifty five lacs only)***

*(ii) **You have deposited Rs.12.50 lacs with the Bank so far which has been adjusted towards your OTS dues.***

*(iii) **You have to pay the remaining Rs.42.50 lacs by 16th August, 2014.”***

It was also made clear that if the above conditions are not fulfilled, OTS shall be cancelled and the petitioner will be required to pay the entire dues.

(c) The petitioner failed to comply with the terms of the OTS dated 17.07.2014 and hence preferred this Writ Petition with a prayer to direct the Bank to allow the petitioner some additional time to repay the dues as per OTS. Also a prayer was made to quash the cancellation notice dated 13.09.2014 of the OTS for non-deposit of required amounts.

(d) This Hon’ble Court vide order dated 07.11.2014 decided to grant some additional time to the petitioner and also directed the parties to file affidavits indicating the compliance of its order. The relevant portion is reproduced below:

“....Considering the aforesaid fact and submission, as an interim measure, we direct that the petitioner shall deposit the balance outstanding out of the OTS agreed by end of November, 2014 and till then no coercive action shall be taken against the petitioner.

List this matter in the 1st week of December, 2014 on which date affidavits shall be filed by the parties indicating compliance of the aforesaid direction.”

The OP Nos.2 & 3 filed an affidavit dated 05.12.2014 clarifying that the **Petitioner has only deposited Rs.8,00,000/- on 01.12.2014 out of the ordered amount of Rs.42,50,000/-**.

In the below mentioned Writ Petition i.e. W.P.(C) No.1117 of 2015, it was brought to our notice that certain Mr. Saroj Kumar Panda paid Rs.10,00,000/-(Rupees Ten lakhs) to O.P. No.2- herein/Stressed Assets Management Branch (SAMB), S.B.I in two equal instalments of Rs.5,00,000/- (Rupees Five Lakhs) on 16.08.2014 & 01.12.2014. However, inadvertently the affidavit dated 05.12.2014 may have missed the sum of Rs.10,00,000/- paid on behalf of the petitioner and thereby claimed that the petitioner has only deposited Rs.8,00,000/-, whereas a sum of Rs.18 Lakhs stood deposited in his account out of the directed amount of Rs.42,50,000/-. Hence, it is clear that the Petitioner failed to comply with the directions of this Court dated 07.11.2014.

(e) In the meantime, the O.P/SBI published a Sale Notice dated 22.10.2016 to auction the mortgaged property on 29.11.2016. Aggrieved by the Sale Notice dated 22.10.2016, the petitioner filed a Misc. Case No.18302 of 2016 contending that it has deposited the entire amount as per the OTS and

hence stay the auction of the mortgaged property. The O.P. Nos.2 & 3 filed their objection dated 29.11.2016 vehemently denying any payment made by the petitioner and contended that the order dated 07.11.2014 passed by this Hon'ble Court has not been complied with. They also argued that the OTS stands cancelled due to non-compliance of terms and conditions by the petitioner.

(ii) Brief facts of W.P. (C) No.1117 of 2015

(a) The brief facts of the case are that the Petitioner No.1 i.e. Mr. Saroj Kumar Panda claims to have been arranged by O.P. No.3 i.e. M/s. Seema Granites (Petitioner in W.P. (C) No.21417 of 2014) to buy the mortgaged property. He also claims that pursuant to such arrangement, he has paid Rs.10,00,000/- (Rupees Ten lakhs) to O.P. No.1- herein/Stressed Assets Management Branch (SAMB), S.B.I (O.P. No.2 in WP(C) No.21417 of 2014) in two equal instalments of Rs.5,00,000/- (Rupees Five Lakhs) on 16.08.2014, 01.12.2014 and Rs.7,00,000/- (Rupees Seven lakhs) to O.P. No.3/ M/s. Seema Granites. It is his submission that the amount paid by him has been misappropriated by the opposite parties. Therefore his prayer is to direct the opposite parties to sell the mortgaged property to him as per the sanctioned OTS proposal or else refund the Rs.17,00,000/- (Rupees Seventeen Lakhs) purportedly paid by him.

(b) The O.P. Nos.1 & 2 i.e. Stressed Assets Management Branch (SAMB), S.B.I and S.B.I. filed a counter affidavit dated 09.03.2016 wherein the *locus standi* of the petitioner was questioned on the basis that the petitioner is a stranger to the loan agreement made between the O.P. No.2/ SBI and O.P. No.3/M/s. Seema Granites and the O.P. No.2 is not aware of any arrangement made between the petitioner and O.P. No.3. It was also argued that the Writ Petition is not maintainable as the petitioner has an alternative statutory forum to raise any grievances.

On the issue of the petitioner depositing Rs.10,00,000/- (Rupees Ten lakhs) to the O.P. No.1/ SAMB and hence claiming either refund or sale of the property to him, the O.P. Nos.1 & 2 contended that such an argument is not acceptable as whatever amounts have been deposited with the Bank for being credited to the loan account of O.P. No.3/ M/s. Seema Granites have been duly credited and according to the policy of the Bank, if any amount is credited to the loan account, it cannot be refunded back under any circumstances.

3. Heard learned counsel of both the parties at length.

4. It is undisputed that the original loan agreement was entered between SBI/ Creditor (OP

No.3 in WP (C) No.21417 of 2014 & OP No.2 in WP (C) No.1117 of 2015) and M/s. Seema Granites/ Debtor (Petitioner in WP (C) No.21417 of 2014 & OP No.3 in WP (C) No.1117 of 2015). The said agreement was never terminated by the parties to the loan agreement. The Debtor may have entered into an arrangement with a third party i.e. Mr. Saroj Kumar Panda (Petitioner in WP (C) No.1117 of 2015), however, the said arrangement was behind the back of SBI/Creditor. It cannot be said that Mr. Saroj Kumar Panda who is a stranger to the contract vide any arrangement can force the Creditor/SBI to certain obligations. Further, the Doctrine of Privity directs us to enforce the agreement made between original parties and not recognize any third party.

Hence, the Writ Petition bearing **WP (C) No.1117 of 2015 stands dismissed** due to lack of *Locus Standi* of the petitioner, however with liberty to seek his available remedies in accordance with law for seeking recovery of stated amounts from M/s. Seema Granites/its proprietors.

5. In W.P.(C) No.21417 of 2014, the petitioner (defaulting borrower) has prayed for quashing the letter dated 13th September, 2014 (Annexure-5), whereby the sanctioned OTS dated 17th July, 2014 has been cancelled for non-deposit of the required amounts by 16th August, 2014; with a further prayer for issuance of direction to the Bank to allow

sometime to repay the outstanding amounts as fixed in the OTS proposal.

After evaluating the facts on record, we find that the Writ Petition is totally devoid of any merits. In terms of the sanctioned OTS dated 17th July, 2014, the petitioner was required to deposit a sum of Rs.42,50,000/- by 16th August, 2014. The Bank alleges that the petitioner did not deposit any amount till the stipulated date i.e. 16th August, 2014, whereas the petitioner claims to have deposited substantial amount, and to establish the same has relied on (Annexure-3). A perusal of Annexure-3 reflects that the same is a Demand Draft dated 16th August, 2014 drawn by ICICI bank for a sum of Rs.3 lakhs only. Thus, the contention that substantial amount was paid within the time before the cancellation of the OTS is totally false. Thus, no fault can be found with the order dated 13th September, 2014 (Annexure-3) cancelling the OTS.

In respect of extension of time, we find that this Court had been indulgent enough to extend the period of deposit till end of November, 2014 and at best it can be accepted that a paltry sum of Rs.18 lakhs towards the requirement of Rs.42.5 lakhs was deposited. Thus, even the prayer for extension of time was partly permitted by this Court and not availed of by the petitioner. Hence, no case for extension of time is made out.

6. With the above observations, we dispose of the two afore-mentioned Writ Petitions.

**(Jaswant Singh)
Judge**

**(M.S. Sahoo)
Judge**



Sipun

1st December, 2022
Cuttack