IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 15052 of 2017

Sk. Rajab Ali .... ***Petitioner***

Mr. Anjan Kumar Biswal, Advocate

-versus-

State of Odisha and others .... ***Opp. Parties***

Mr. Swayambhu Mishra,
Additional Standing Counsel
(For Opposite Party Nos. 1 and 2)

Mr. Karunakar Gaya, Advocate
(For Opposite Party Nos. 3 to 5)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
08.02.2022

Order No.	
14.	**1.** This matter is taken up through Hybrid mode.

2. Petitioner in this writ petition seeks to assail the order dated 3rd March, 2017 (Annexure-13) passed by Registrar, Cooperative Societies, Odisha, Bhubaneswar-Opposite Party No.2 in refusing to settle the loan account of the Petitioner under One Time Settlement (OTS) scheme floated by the State Government under Annexure-6.

3. Bereft of unnecessary details, facts relevant for proper adjudication of this case are that the Petitioner had incurred a loan of Rs.10.00 lakh from the Urban Cooperative Bank Limited, Main Branch, Tinikonia Bagicha, Buxi Bazar, Cuttack –Opposite Party No.5 vide loan Account No.BBL-8. Due to irregular repayment of the instalments, the loan account became NPA on 31st March, 2003. Thereafter, the Chief Executive Officer of the Opposite Party-Bank filed Dispute Case No.276

of 2003 for recovery of the loan amount of Rs.9,31,400/-, i.e, Rs.8,64,931 towards principal amount and Rs.66,469/- towards interest, before the Deputy Registrar, Cooperative Societies. In the proceeding in Pre-attachment Case No.1 of 2004 the stock of the Petitioner was attached under Section 105 of the Odisha Cooperative Societies Act, 1962 (for short, 'the Act'). During 2011, an OTS Scheme was floated by the State Government under Annexure-6. In the said scheme, last date of receipt of applications from the borrowers was fixed to 30th July, 2011. The date of settlement of the claim under the said Scheme was fixed to 31st October, 2011. In order to avail benefit, the Petitioner made an application on 19th July, 2011 for settlement of his loan account under the OTS Scheme. Clause (c) of Para-1 of the said Scheme provided six categories of loan accounts are not covered under the OTS Scheme. The same are as follows:-

> " 1. ***<u>Coverage;</u>***
>
> *xx xx xx*
>
> *(c) The following categories of loans will not be covered by the Scheme:*
>
> *(i) Cases of willful default, frauds and malfeasance;*
>
> *(ii) Loans with tie-up arrangement for recovery (e.g. loans availed by salary earners);*
>
> *(iii) Loans availed of or guaranteed by Directors or by close relatives of Directors or by firms / companies /institutions in which the Directors are interested or by ex-Directors of respective Urban Co-operative Banks;*
>
> *(iv) Loans guaranteed by Government (including cases where Government guarantee has been invoked but not honoured by the Government);*
>
> *(v) Loans due from Government Departments / Undertakings;*
>
> *(vi) Loans under Government directed programmes"*

4. Materials available on record disclose that the Petitioner had travelled a number of times to this Court to avail the benefit under the OTS Scheme. Amongst others, the order dated 8th May, 2014 passed in W.P.(C) Nos.27865 of 2013 and order dated 25th November, 2016 passed in W.P.(C) No.9554 of 2015 are worth mentioning.

5. W.P.(C) No.27865 of 2013 was filed by the Petitioner to quash the letter dated 18th November, 2013 issued by the Chief Executive in-charge of the Opposite Party-Bank rejecting his OTS application. This Court, vide order dated 8th May, 2014 (Annexure-10), while setting aside the letter dated 18th November, 2013 directed the ADM-cum-Authorized Officer of the Opposite Party Bank to consider the OTS application of the Petitioner dated 19th July, 2011 along with others and take a decision keeping in mind the observation made in the said order. Relevant portion of the said order reads as follows:-

> *"xxx xxx xxx xxx*
>
> *It transpires from the record that the loan account became NPA w.e.f. 31.3.2004. During 2011, vide Annexure-6, an OTS Scheme was adopted by opposite party no.1. It is admitted at Paragraph-7 of the counter affidavit filed by opposite party no.2 that under the said OTS Scheme, the last date of receipt of application form from the borrowers was 30.7.2011 and the last date of settlement of claim was 31.10.2011. All these have been clearly reflected in Annexure-6. Further Annexure-6 makes it clear that six types of loans as indicated in Clause (c) of Paragraph-1 would not be covered by the Scheme. It is not disputed at the bar that the case of the petitioners did not fall within these six categories of loan. In other words the case of the petitioners was clearly covered by Annexure-6. Further vide Annexure-4 dated 14.7.2011, the petitioners were intimated that they might avail OTS Scheme by 30.7.2011 in order "to get some relief". It may be noted here that 30.7.2011 was the last date of application as per Annexure-6. It appears that pursuant to such representation, the petitioners put in their OTS application on 19.7.2011. Instead of settling the matter by 31.10.2011 as required under Annexure-6, the authorities kept such application pending and ultimately rejected the same belatedly under Annexure-1 dated 18.11.2003 relying on a ground which is*

> *not available under Annexure-6. It appears that the ground which has been used by the Bank authorities to reject the OTS application of the petitioners came much after, i.e., on 6.6.2012 as indicated at Paragraph-10 of the counter affidavit filed by opposite party no.2 and the ground is where net present value of secured assets outweighed the settlement amount, OTS applications are not to be entertained. But such a ground was/is not available under Annexure-6. <u>In such background the Bank authorities could not have used such a ground to reject the OTS application of the petitioners, which should have been disposed of by 30.10.2011 on the basis of principles prevailing then</u>. …….”* (*emphasis supplied*)

6. Pursuant to such direction, the OTS application of the Petitioner was again considered and rejected by the Management in-charge vide letter dated 12th December, 2014 (Annexure-11). Thus, the Petitioner had to approach this Court in W.P.(C) No.9554 of 2015. This Court, while entertaining the writ petition, vide interim order dated 25th November, 2016 (Annexure-12), directed the Registrar, Cooperative Societies-Opposite Party No.2 to take a decision on the request of the Petitioner within a period of four weeks. Accordingly, the impugned order dated 3rd March, 2017 (Annexure-13) has been passed. In view of the said order, this Court disposed of W.P.(C) No.9554 of 2015 vide order dated 27th April, 2017 (Annexure-14) holding it to be infructuous.

7. The main ground on which the claim of the Petitioner for settlement of his loan account under OTS Scheme (Annexure-6) was rejected, is as under:-

> *“As per provision of Clause-4 of the OTS guideline, compromise settlement of all NPAs should be non-discretionary and non-discriminatory and as per provision of Clause-1(c) (i) of the guideline, loan cases of willful default, frauds and malfeasance will not be covered under the scheme.*
>
> *Hence, the OTS application and representation of the petitioner Sk. Rajab Ali have been considered and*

keeping in view the points as discussed supra, his petitions submitted through the Urban Cooperative Bank Ltd., Cuttack are rejected in view of the interest of the Bank as well as the depositors of the Bank."

8. It is submitted by Mr. Biswal, learned counsel for the Petitioner that this Court, while disposing of W.P.(C) No.27865 of 2013, has categorically held that the claim of the Petitioner does not come within the purview of categories under Clause-1(c) (i) of the guideline and thus the claim of the Petitioner for settlement of the loan account is squarely covered under the OTS Scheme as at Annexure-6. Hence, the ground on which the claim of the Petitioner was rejected is not sustainable in the eyes of law.

9. Mr. Mishra, learned ASC referring to the counter affidavit filed by the Assistant Registrar, Cooperative Societies submits that the as per the provisions of Clause-4 of the OTS guidelines, compromise settlement of all NPAs should be non-discretionary and non-discriminatory and as per provisions of Clause-1(c) (i) of the guidelines, loan accounts falling under the categories of willful default, frauds and malfeasance will not be covered under the Scheme. He, therefore, strongly defends the rejection of petitioner's application vide order under Annexure-13. He also refers to paragraph-10 of the counter affidavit filed by Opposite Party No.2, which reads as under:-

"10. That, in reply to the averments made in Paragraph-20 of the writ petition, it is humbly submitted that though the entire process was to be completed by 31.10.2011, the Govt. in Cooperation Department had been pleased to extend the implementation of OTS scheme up to 30.09.2013 in different phases. The application of the petitioner was under process of the Opp. Party Bank. The Bank had sought clarification on the application of the petitioner and the matter was referred to RBI for necessary clarification. The RBI placed the matter in the Task Force

> *for Urban Co-operative Banks (TAFCUB) meeting held on 06.06.2012 and the decision of the meeting was communicated to the Bank for taking necessary action in the matter (Annexure-9 at Page-41 to the writ petition). As per the provisions of Clause-4 of the OTS guidelines, compromise settlement of all NPAs should be non-discretionary and non-discriminatory and as per provisions of Clause-1(c) (i) of the guidelines, loan cases of willful default, frauds and malfeasance will not be covered under the Scheme. Accordingly, the application of the petitioner is rejected by a speaking reasoned order under Annexure-13 to the writ petition."*

10. Mr. Gaya, learned counsel for Opposite Party-Bank submits that since the decision has been taken by the Registrar, Cooperative Societies, Odisha, Bhubaneswar, he has nothing to say in the matter.

11. Taking into consideration the rival contentions raised by learned counsel for the parties and on perusal of materials available on record, this Court finds that while adjudicating W.P.(C) No.27865 of 2013, it has been categorically held that the case of the Petitioner is not covered under Clause-1(c)(i) of the OTS Scheme under Annexure-6. It is also observed therein that the case of the Petitioner is clearly covered under the OTS Scheme under Annexure-6. There is no dispute to the fact that the application of the Petitioner for settlement of loan account was submitted within the stipulated time and the said Scheme is non-discretionary and non-discriminatory one. The contentions of Mr. Mishra, learned ASC is no more available to be raised in view of the clear findings of this Court in W.P.(C) No.27865 of 2013 (supra). Registrar, Cooperative Societies-Opposite Party No.2, while passing the impugned order, ought to have taken note of such observation made by this Court in W.P.(C) No.27865 of 2013. It appears that Registrar, Cooperative

Societies rejected the claim of the Petitioner holding that the Petitioner is an willful defaulter including his case under Clause -1(c)(i) of the Guideline of the OTS Scheme. In view of the discussions made above, such a finding including the impugned order under Annexure-13 passed by the Registrar, Cooperative Societies is not sustainable at all.

12. Thus, the Registrar, Cooperative Societies-Opposite Party No.2 has to consider the application of the Petitioner afresh under the OTS Scheme as at Annexure-6 without applying the disqualifications enumerated in Clasue-1(c) of the said Scheme.

13. Accordingly, the impugned order under Annexure-13 is set aside and the Registrar, Cooperative Societies-Opposite Party No.2 is directed to consider the case of the Petitioner afresh under the provisions of the OTS Scheme as at Annexure-6 without applying disqualification in Clasue-1(c) of the said Scheme. The entire exercise shall be completed within a period of four months.

14. The writ petition is allowed to the above extent. However, in the facts and circumstances of the case, there shall be no order as to costs.

Issue urgent certified copy of the order on proper application.

s.s.satapathy

(K.R. Mohapatra)
Judge