IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.3509 of 2019

Sukantilata Mishra …. ***Petitioner***

Mr. Biswajit Parida, Advocate

-versus-

Managing Director, Orissa Rural Housing & Development Corporation Ltd., Bhubaneswar & Others …. ***Opp. Parties***

Mr. Abhimanyu Parida, Advocate

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. SAHOO

ORDER (Oral)
23.11.2022
(Hybrid Mode)

Order No.

09. **1.** Petitioner is a defaulting borrower of a Housing Loan of Rs.80,000/- availed on 25.06.1999 with EMIs of Rs.1,088/- per month from the Orissa Rural Housing and Development Corporation, Bhubaneswar (for short 'ORHDC')/O.P. No.3. To secure the loan, an equitable mortgage of the property owned by the petitioner was executed. Due to the severe illness of the petitioner, the monthly installments could not be deposited leading to the O.P. No.3 issuing a notice dated 20.08.2003 (Annexure-2) asking the petitioner to pay the entire outstanding amount of Rs.96,925/- due as on 31.08.2003. However, the amounts due on account of default of 19 installments was stated to be Rs.20,284/-. The petitioner however could not either pay the amounts overdue nor the entire outstanding loan amount.

2. The petitioner is stated to have filed an application dated 01.07.2017 (Annexure-5) seeking consideration for a settlement under OTS Scheme, which was rejected by O.P. No.3 vide Memo dated 24.07.2017 (Annexure-6) intimating that there was no provision of OTS allowed by the Government/ prevailing in the Corporation. It was further intimated that there was an outstanding amount of Rs.4,15,255/- due as on 31.07.2017 and the petitioner was requested to deposit a monthly installment of minimum of more than Rs.2,000/- per month.

3. The petitioner vide representation dated 15.11.2017 claimed reconsideration and also filed W.P.(C) No.7032 of 2018 seeking a mandamus for such reconsideration, which was disposed of vide order dated 03.07.2018 which reads as under:-

> *"In view of the order this Court propose to pass, it is not necessary to issue notice to the opposite parties.*
>
> *This writ petition has been filed praying for a direction to the opposite parties-Corporation to settle the loan account of the petitioner by way of One time Settlement as per the application of the petitioner dated 15.11.2017, under Annexure-7 to the writ petition.*
>
> *Learned counsel for the petitioners submit that the petitioner had availed a House Building loan of Rs.80,000/- (rupees eighty thousand only) from the opposite parties-Corporation in the year 1999 for construction of her residential house. It is also submitted that though the petitioner has repaid*

some amounts, due to her various ailments and financial crunch, she could not repay the balance loan amount in time for which, the Corporation has initiated action against her issuing demand notice under Annexure-1 for recovery of the loan dues. It is further submitted that the petitioner has made an application under Annexure-5 for One Time Settlement. But her application has been disallowed on the ground that no OTS Scheme is available in the Corporation. However, she was directed to pay minimum amount exceeding Rs.2,000/- per month. Thereafter, the petitioner has made another application on 15.11.2017 under Annexure-7 for One Time Settlement. It is the case of the petitioner that the same is pending.

Learned counsel for the petitioner argues that though the opposite party No.2 has intimated that there is no OTS Scheme in their Corporation, in some other cases, settlement has been made.

If that be so, the petitioner is at liberty to make a fresh application before the opposite party no.1 within a period of ten working days hence annexing a certified copy of this order along with a copy of the brief. On such event, the opposite party No.1 may consider the same and if any such settlement is made in favour of any person, then, the same benefit may be extended to the present petitioner.

With such observations, this writ petition is disposed of."

4. In compliance of the aforesaid, the petitioner is stated to have filed a comprehensive representation dated 07.07.2018 (Annexure-8), which was also rejected vide Memo dated 11.12.2018 (Annexure-1). Hence, the present Writ Petition has been filed.

5. The prayer in the present Writ Petition is to *set aside* the order dated 11.12.2018 (Annexure-1) wherein the OTS application for settlement of House Building loan has been rejected by violating the order dated 03.07.2018 passed in W.P.(C) No.7032 of 2018.

6. This Court while issuing notice to the Opposite Parties vide order dated 14.05.2019 had passed the following interim directions:-

> *"Issue notice through registered Post with A.D. to the opposite parties indicating therein that the matter shall be disposed of at the stage of admission, requisites for which shall be filed by 16.05.2019 as undertaken by learned counsel for the petitioner.*
>
> *Let the petitioner deposits a sum of Rs.50,000/- (Rupees Fifty thousand only) before opposite party No.2 on or before 31.05.2019, in such event, no coercive action shall be taken against the petitioner till the next date.*
>
> *Put up this case on 27.06.2019."*

7. Learned counsel for the petitioner has argued that the application for OTS settlement has been wrongly rejected and in violation of the aforesaid order dated 03.07.2018 since a similarly situated defaulter, i.e., one Gopabandhu Deo had been extended the benefit of One Time Settlement as reflected in Memo dated 20.11.2013 (Annexure-10 series).

8. On the other hand, learned counsel for the Bank relying upon the contents of an affidavit dated 11.05.2022 filed by the Managing Director, Odisha Rural Housing & Development Corporation Ltd. submits that the action of the Opposite Parties in rejecting the OTS application is legal and valid for the reason, (i) That in case of Gopabandu Deo, he had made an application on 30.09.2013 which was within the validity of the OTS Scheme prevailing therein and therefore his account was got settled on his depositing the amounts specified in the sanction letter (Annexure-10) whereas the petitioner had miserably failed to avail any opportunity for OTS latest by 31.07.2014 when the validity period of the Scheme had lapsed. The petitioner in fact has kept silent for over a decade then started clamouring for settlement under the OTS since 01.07.2017, i.e., during the periods when there was no prevailing OTS Scheme. It is thus stated that there is no similarity between the case of Gopabandhu Deo and the petitioner. (ii) Secondly, it is submitted that there is no violation of the directions passed by this Court on 03.07.2018 as the amicable settlement was to be provided to the petitioner in case any other person had been extended the benefit at that period of time, which concededly is not the case as demonstrated in the counter affidavit on behalf of the Bank and argued here above. Thus, it is asserted that there is no violation of the order passed by this Court. It is further added that a sum of Rs.7,03,970/- are due as on 10.05.2022.

9. After analyzing the rival arguments, we are persuaded to accept the stand on behalf of the ORHDC. We are satisfied that there is no case of discrimination or similarity between the petitioner and the said Gopabandhu Deo, whose loan account was settled during the subsistence of the OTS Scheme, whereas the petitioner has never applied for a settlement during the validity of any OTS Scheme. It is well settled that the Hon'ble Supreme Court in a recent Judgment in ***Bijnor Urban Cooperative Bank Limited, Bijnor and others Vrs. Meenal Agarwal and others, AIR 2022 SC 56*** has held to the effect that no directions can be issued by the Court to the Bank to accept the OTS proposals *dehors* the terms of the policy.

We also find that the directions dated 03.07.2018 have to be construed in the context of the operation of prevailing OTS Scheme in the year 2018. Thus, we find that the present Writ Petition is liable to be dismissed.

10. In view of the above, the Writ Petition is dismissed.

(Jaswant Singh)
Judge

(M.S. Sahoo)
Judge

AKK 23rd November, 2022
Cuttack