IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.31219 Of 2021
(Through hybrid mode)

Chitta Ranjan Bastia .... ***Petitioner***

Mr. Nalini Kanta Dash, Advocate

-versus-

Sr. Branch Manager, Canara Bank, Jagatsinghpur and another .... ***Opposite Parties***

Mr. B.N. Udgata, Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER
11.04.2022

Order No.	
7.	**1.** The writ petition was moved by Mr. Dash, learned advocate appearing on behalf of petitioner, on 13th December, 2021. Paragraph-1 in order made that day is reproduced below.

> ***"****Mr. Dash, learned advocate appears on behalf of petitioner and submits, his client is borrower in respect of housing loan. Rs.29.50 lakhs was disbursed. He submits, his client paid aggregate instalments of approximately Rs.3,00,000/- and then defaulted. He approached the bank for settlement on one time basis (OTS). He refers to annexure-1 and submits, the calculation was made by then Bank Manager for OTS at Rs.22.50 lakhs. He paid the same. However, thereafter the bank is not issuing 'No Dues Certificate' by demanding further amount.*

2. He draws attention to letter dated 27th December, 2017 to submit, after OTS offer amount was deposited in full by his client, the bank, by its letter dated 27th December, 2017, demanded more money for sanction of the proposal. Contents of said letter dated 27th December, 2017 are reproduced below.

> *"As per the OTS application given by you with an offer amount of 22.50 lack, we have forwarded the proposal to our higher official and after verifying the details they have returned the proposal and given remark to increase the offer amount. So that the proposal can be sanctioned."*

He submits, this demand for extra money was wrongful, since the terms of the OTS required his client to put in Rs.22.50 lakhs, which he did. The bank by its letter dated 28th December, 2017 to the police, confirmed that his client had paid the offered amount. Contents of said letter dated 28th December, 2017 are reproduced below.

> *"Mr. Chitta Ranjan Bastia & Mr. Banambar bastia has availed a housing loan bearing account no.80727740000585 from us. Due to financial difficulties they were not paying the installment. Now they have applied for One Time Settlement of the above said loan a/c with an offer amount of Rs.22.50 lac and paid the full offer amount.*
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> *This is for your information."*

3. Mr. Udgata, learned advocate appears on behalf of the bank and submits, his client never accepted the offer for OTS. No disclosure in the writ petition can be relied upon as acceptance by his client. At the present time, notice under section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 already stands issued. It is for such reason that petitioner has moved this Court. Since recovery by resort to the 2002 Act has commenced, the writ petition is not maintainable.

4. Without prejudice to his above contention he submits by drawing attention to his client's further affidavit confirmed on 11th January, 2022, petitioner was a dishonest borrower. In availing the housing loan petitioner had made misrepresentation regarding his income status. The bank filed complaint with the police on the account declared as fraud account, as per extant guidelines and policies of the apex bank. He submits, thereupon petitioner submitted proposal for OTS of the account giving an offer of Rs.22.50 lakhs. All this have been stated in paragraphs 6 and 7 of the affidavit. He submits, there should not be interference.

5. Paragraphs 3, 4 and 5 from above referred order dated 13th December, 2021 are reproduced below.

> ***"3.*** *The meaning of offer is to be understood, in the facts and circumstances. There cannot be offer followed by acceptance and a counter offer. It appears the bank has made a counter offer of asking for increase in original offer, upon having accepted the offer of OTS upon full payment of offered amounts.*
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> ***4.*** *The bank has option to to seek recovery under the loan agreement, upon refund of Rs.22.50 lakhs, to petitioner. The calculation of interest must naturally remain suspended from date of deposit of Rs.22.50 lakhs, as between 8th and 18th September, 2017. It becomes significant that between the first deposit on 8th September 2017 against offered amount and 18th September, 2017 (last date of deposit), the bank did not raise its counter offer.*
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> ***5.*** *The bank will be heard on its position on adjourned date.*

6. As aforesaid, the bank filed its further affidavit as affirmed on 11th January, 2022 i.e., on notice of contents in said order dated 13th December, 2021. There is no denial in the affidavit regarding negotiation and terms of settlement for OTS at Rs.22.50 lakhs. It is the bank's position that on the account being declared fraud, petitioner approached for settlement. In that context becomes significant the bank's communication dated 28th December, 2017 to the Inspector, Paradeep Police Station, reproduced above. Also important is that this communication was made one day after the communication dated 27th December, 2017, whereby petitioner had been asked to pay some more.

7. The bank is a public sector bank. It has in its affidavit filed, referred to extant guidelines and policies of the apex bank. Court is convinced it has policies and guidelines in respect of OTS. The demand for more money, after the offer of OTS was followed up by full payment, does not mention the additional amount of money required to be paid, let alone with reference to any policy/scheme or guideline. Court had on 13th December, 2021 recorded that the calculation was made by then Bank Manager, for the OTS. The affidavit affirmed by the bank thereafter, on 11th January, 2022, does not dispute the position.

8. Mr. Udgata had relied on **judgment dated 15th December, 2021** of the Supreme Court in **Civil Appeal no.7411 of 2021** (**The Bijnor Urban Cooperative Bank Ltd, Bijnor and others v. Meenal Agarwal & others**), paragraph-9 of Live Law print. The Supreme Court, in the paragraph, said clearly that under OTS scheme, always a lesser amount than the amount due payable under the loan account will be paid. Facts in this case are undisputed that petitioner obtained housing loan of Rs. 29.50 lakhs as disbursed. Approximately Rs.3

lakhs was repaid by installments and there was default. A further aggregate sum of Rs.22.50 lakhs was paid under offer of OTS. In total petitioner therefore paid Rs.25.5 lakhs, for settling the account, on paying a lesser amount than due and payable. That is the scheme of OTS. In the bank's dealing with petitioner, leading up to the terms of offer for the OTS and payment, there was no otherwise disclosure by the bank that either it did not enter into such negotiation or that it had demanded a higher amount.

9. Court is satisfied that the OTS was negotiated and fulfilled by petitioner. If he had obtained the loan by practicing fraud, it is unconnected with settlement of the account.

10. The bank will issue 'No Dues' certificate to petitioner in respect of loan account no.802727740000585 within 3 weeks of communication.

11. The writ petition is disposed of.

(Arindam Sinha)
Judge

Sks