GAURI AMIT GAEKWAD
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11537 OF 2019

Bhoruka Drum & Allied Ind. Pvt. Ltd.)
Having office at 11/B, Sudhakar, Narayan)
Dabholkar Road, Mumbai 400 006) ....Petitioner

V/s.

Bank of Maharashtra)
Having its Asset Recovery Branch office at)
6th Flr., Janmangal, Mumbai Samachar Marg,)
Fort, Mumbai 400 023 through its Assistant)
General Manager Mr. Aditya Prakash) ....Respondent

Mr. Rajneesh Agarwal a/w. Ms. Pooja Thorat and Mr. Girish Thanvi i/b. Ms. Swati D. Sawant for petitioner.
Mr. Jayesh Desai i/b. Singhi and Co. for respondent.

CORAM : K.R.SHRIRAM, &
A.S. DOCTOR, JJ.
DATED : 19th JULY 2022

ORAL JUDGMENT : (PER K.R. SHRIRAM, J.)

1 Petitioner has approached this Court for a writ of certiorari or any other appropriate writ, order or direction to respondent bank to accept the One Time Settlement (OTS) proposal of petitioner under Mahamukti Scheme 2017-2018 and issue no dues certificate and return all securities and hand over possession of the mortgaged property at B-11 Wagle Industrial Estate, Road No.15, Wagle Wadi, Thane 400 604 to petitioner upon payment of the settlement amount.

2 Petitioner was incorporated sometime in 1964 and was in the business of manufacturing steel drums and allied products and in another division, assembling electronic products including TVs as OEM for Sony

Orson.

3 Sometime in 1978, petitioner took cash credit facility including hypothecation, bill discounting and letter of credit facility from respondent from time to time. It is petitioner's case that they were very punctual in making payments to respondent. Due to adverse market conditions, sometime in 1987, petitioner suffered huge losses and had to shut its business operations. At that time, according to petitioner, it had principal outstanding ledger balance of approximately Rs.1.67 Crores. Respondent filed three civil suits before Civil Judge, Senior Division, Thane for recovery of its dues of Rs.1,84,75,354.90, Rs.43,22,147.61 and Rs.16,78,474.44 and other reliefs. Petitioner did not contest those suits and a decree came to be passed against petitioner.

4 The decree remained unexecuted and after the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDB Act) was promulgated, respondent applied to DRT-III Mumbai to issue recovery certificates. Petitioner did not contest that application as well. Recovery certificates came to be issued and the Recovery Officer initiated execution proceedings and proceeded to attach the factory premises of petitioner that was mortgaged to respondent. In 2005, the Recovery Officer proceeded to sell the factory premises. It is petitioner's case that the sale was illegal etc. but we need not go into that aspect at this stage. Mr. Agarwal states that the sale has been later set aside. Be that as it may, the issue in the present case is nothing to do with the sale.

5 Sometime in January 2018, based on guidelines issued by RBI, respondent came up with a Scheme for OTS called Mahamukti Scheme 2017-2018. Pursuant to the Scheme, respondent addressed communication to all the NPAs against whom litigations were pending making an offer with the borrowers to enter into an OTS. According to petitioner, it received an offer dated 18th January 2018 by which it was asked to pay a sum of R.1,27,19,000/- to be paid on or before 31st March 2018. Petitioner was also informed that application for OTS will be processed only on deposit of minimum 5% of the OTS amount and the balance amount can be paid on or before 31st March 2018 failing which the OTS sanctioned will be rendered infructuous. Petitioner was also informed that petitioner will be eligible for an additional incentive if paid on or before 28th February 2018 and if the provisional amount is paid on or before 28th February 2018, the amount will be reduced to Rs,1,17,19,000/-, a discount of about Rs.10 lakhs. Petitioner responded by its letter dated 12th February 2018 and after giving detailed background, agreed to pay Rs.1,27,19,000/- in the following manner :

- *5% is paid into Bank's no-lien account along with this offer (Amount : Rs.635,950/- UTR No.IBKLR9201802120 0089560) which shall be appropriated towards the settlement upon saction;*

- *balance 95% shall be paid before 31st March 2018 into Bank's no-lien account; Company will make an attempt to arrange payment from investors before 28th February 2018 to avail total settlement amount of Rs.117,19,000/-;*

- *against appropriation of the balance amount of 95% the Bank shall return physical possession of the Company's security, i.e., Company's mortgaged property at B-11 Wagle Industrial Estate, Thane MIDC, which is in possession of the Bank.*

> *Upon receipt of entire OTS amount, Bank shall issue No Dues Certificate, withdraw all proceedings against Company, its directors, guarantors, etc. and hand over all mortgaged assets.*

6 Respondent replied by its letter dated 28th February 2018 informing petitioner that its offer is conditional and called upon petitioner to make an unconditional acceptance on the following terms :

> *2. Further we request you to give unconditional acceptance on the following terms -*
>
> *(a) On receipt of entire OTS amount charge of Bank of Maharashtra over the mortgaged asset B-11, Wagle Industrial Estate, Thane (West) would be released. It will be your responsibility to get the possession of the property from the present occupant and also to deal with NKGSB Bank, Patel Profile Pvt. Ltd., S.S. Engineering and Consultants, Sales Tax Department, Labour dues or any other dues from any authority and litigation which may arise in future. You shall also deal with present and future litigations which may arise over the property.*
>
> *(b) You will pay upfront amount of Rs.5 lakhs over the compromise amount to meet the expenses which may arise in future litigation or otherwise.*
>
> *(c) The borrower and guarantor will indemnify the Bank in the eventuality of any litigations, claims, damages, penalty imposed on the Bank.*
>
> *We request you to immediately respond and convey acceptance on the above mentioned queries, to enable us to inform to competent authorities.*

7 As petitioner, by its letter dated 9th March 2018, did not make an offer, which according to respondent was unconditional, respondent by its letter dated 29th March 2018 informed petitioner that petitioner cannot be given the benefit of Mahamukti Scheme since petitioner's OTS offer was conditional. It is this letter that petitioner is impugning in the petition. Subsequently, petitioner addressed another letter dated 31st March 2018 to

respondent once again making the same offer that it made vide its communication dated 12th February 2018.

8 Mr. Agarwal relied upon two judgments, one of the Apex Court in ***Sardar Associates and Ors. V/s. Punjab and Sind Bank and Ors.***[1] and other of the Madhya Pradesh High Court at Jabalpur in the case of ***Mohanlal Patidar V/s. Bank of Maharashtra and Anr.***[2] to submit that this Court can exercise its jurisdiction under Article 226 of the Constitution of India in matters of this nature and respondent being a public sector bank is a State and is bound by RBI guidelines and having made an offer under the Mahamukti Scheme and petitioner having accepted the offer cannot renege on the offer.

9 Mr. Desai appearing for respondent submitted that :

(a) this Court should not entertain this petition under Article 226 of the Constitution of India;

(b) the Mahamukti OTS Scheme was operative only for a limited period till 31st March 2018 and all the borrowers, against whom various litigations were pending, had to pay and settle the account under the Scheme before the cut off date of 31st March 2018 which petitioner failed to pay;

(c) the offer of the OTS proposal and the correspondence from respondent were all on without prejudice and there was not a concluded OTS proposal and acceptance;

1. (2009) 8 SCC 257
2. Writ Petition No.22127 of 2021 dated 21.2.2022

(d) petitioner wanted respondent to, upon payment of the entire amount, return physical possession of company security, i.e., the mortgaged property, which condition was not acceptable to respondent because in the recovery proceedings against petitioner, which has been going on from the year 2005, the property has already been sold to a third party who had borrowed money from another bank and that bank had also sold that property to further third party;

(e) therefore, there was no binding OTS offer or acceptance.

10 Having heard the counsel and also considering the pleadings, we are not inclined to exercise our jurisdiction under Article 226 of the Constitution of India. We come to this conclusion because the communications exchanged between the parties for the OTS settlement were all without prejudice communications. Therefore, there was no binding concluded OTS Scheme between the parties. Moreover, respondent had made it clear to petitioner that petitioner's requirement that upon making the balance payment of 95% respondent shall return physical possession of company security was not acceptable to respondent. This was because the security was not in possession of respondent.

11 In the circumstances, in our view, respondent was justified in taking a stand that petitioner's offer was conditional and they were not willing to accept any conditional offer. As regards the two judgments relied upon by Mr. Agarwal, both are not applicable to the facts and circumstances of the case at hand. In both these judgments, it does appear that there was a

concluded OTS agreement between the parties whereas, in the case at hand there is no OTS agreement.

12 In the circumstances, petition dismissed with costs in the sum of Rs.50,000/-. The costs shall be paid by petitioner to respondent by way of cheque drawn in favour of the advocate for respondent within two weeks from today.

(A.S. DOCTOR, J.) **(K.R. SHRIRAM, J.)**