IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.24507 of 2019 (O&M)
Reserved on 25.05.2022
Date of Decision: 02.06.2022

M/S. R.S. RICE MILLS, THROUGH ITS PROPRIETOR SH. DARSHAN SINGH AND OTHERS ***……..Petitioners***

V/s.

DEBTS RECOVERY TRIBUNAL-I, SECTOR 17, CHANDIGARH THROUGH ITS PRESIDING OFFICER AND OTHERS

.....Respondents

CWP No.21858 of 2019 (O&M)

HARJINDER SINGH ***……..Petitioner***

V/s.

STATE BANK OF INDIA, STRESSED ASSETS RECOVERY BRANCH THROUGH ITS MANAGER

.....Respondent

CORAM: ***HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO***
HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Aalok Jagga, Advocate,
for the petitioner in CWP No.24507 of 2019.

Mr. Manish Jain, Advocate and Mr. Mayur Kanwar, Advocate
for the petitioner in CWP No. 21858 of 2019 and
for respondent No.3 in CWP No.24507 of 2019.

Mr. Rakesh Gupta, Advocate
for respondent No. 2-Bank (in both Writ Petitions)

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M.S. RAMACHANDRA RAO, J.

These two Writ Petitions arise between the same parties in relation to the same transactions, and therefore, they are being disposed of by this common order.

The Background facts

M/s. R.S. Mills, a proprietory concern (for short' the borower') had availed a cash credit limit of ₹2.25 Crores and a term loan of

₹1.75 Crores totaling ₹4 Crores from the State Bank of India (for short 'the Bank').

Since the borrower had defaulted in payment of the loan, on 28.06.2013 a notice under Section 13(2) of the SARFAESI Act, 2002 was issued by the Bank claiming ₹4,08,13,684.50 ps. allegedly due as on 26.06.2013 on which date the Bank claimed that the loan account has become NPA.

The borrower contends that after the receipt of the notice under Section 13(2) of the Act, between the period 29.06.2013 and 31.03.2016, he paid ₹3,17,81,400/- to the Bank but the Bank did not upgrade his account to a 'standard account' category as per the RBI guidelines.

The Bank subsequently issued on 26.12.2014, a notice under Section 13 (4) of the Act to the borrower.

It also issued a sale notice on 23.06.2015 which was challenged by the borrower before the DRT-II, Chandigarh by filing SA No.333 of 2015.

S.A No.333 of 2015

The said SA came up for hearing on 22.06.2015, and the borrower offered to pay the dues of the Bank and further to show its *bona fides* offered to hand over the keys of it's Petrol Pump to the Branch Manager of the Bank as security. While staying the e-auction which was to take place, borrower was directed by the Tribunal to hand over the key of the Petrol Pump on the next date of hearing i.e. by 24.06.2015.

On the adjourned date, SA No.333 of 2015 was disposed of recording that ₹3 Lakhs had been deposited by the borrower, and he was willing to pay the interest on the amount mentioned in the notice issued under Section 13(2) of the Act on 28.06.2013 at 10% per annum simple on reducing balance, but the Tribunal directed him to pay balance amount by 15.01.2016 with interest to 11% per annum.

The Tribunal held that if there is any default in payment which was to be cleared by 15.01.2016, concession granted to the borrower would be withdrawn and the Bank would be at liberty to sell the property.

Three keys of the property of the borrower were handed over to the Branch Manager of the Bank. The Tribunal recorded that if the payments were made as per the schedule or earlier, title deed and keys would be returned to the borrower, and the mortgage created by the borrower would stand discharged.

Subsequent events

As stated above, the borrower claims to have paid ₹3,17,81,400/- during the period between 29.06.2013 and 31.03.2016.

The One Time Settlement of 2018

Since the entire dues were not cleared and since the Bank introduced a SBI-OTS Policy of 2018 on 25.09.2018, it offered to settle the account at OTS of ₹1,36,07,363/- out of which 5% i.e. ₹6,80,368/- was required to be deposited at the time of application for OTS being made, further 15% i.e ₹20,41,105/- to be deposited within 30 days, and the balance within six months.

The borrower wrote a letter on 29.09.2018 disputing calculation of the OTS amount fixed by the Bank contending that it had already been paid ₹3,17,81,400/- as against the demand of ₹4,08,12,365/- and requested the Bank to give the break-up of the calculations of the OTS amount while attaching the demand draft of ₹6.81 Lakhs towards 5% of the OTS application money, for being covered under the OTS scheme.

The Bank replied on 29.09.2018 to the borrower that the OTS has been rightly calculated and that the scheme is unconditional, and it is open till 30.09.2018.

Events in 2019

On 30.03.2019, the borrower prepared a demand draft of ₹64 Lakhs, but the Bank did not accept the same and instead issued a sale notice on 08.05.2019 putting the properties of the borrower for sale.

The borrower filed CWP No.9848 of 2019 before this Court, but withdrew the same with liberty to avail alternate remedy on 11.04.2019.

The borrower then filed SA No. 86 of 2019 before the DRT-I, Chandigarh which dismissed the said SA.

Harjinder Singh, brother of the proprietor of the borrower had participated in the auction of the sale of the immovable properties of the borrower held on 10.06.2019, and submitted the highest bid of ₹89.35 Lakhs.

He deposited ₹8.91 Lakhs on 07.06.2019, ₹13,42,750/- on 10.06.2019 and ₹27,01,250/- on 21.06.2019 leaving balance of ₹39,97,750/-.

On 25.06.2019, the Auction Purchaser sought an extension of time up to 20.08.2019 undertaking that if the amount is not deposited within that time, the Bank can forfeit the deposited amount. This was accepted on the same day by the Bank.

Subsequently, on 16.08.2019 he again made a request for further extension up to 25.09.2019 stating that deposited amount can be forfeited if he did not deposit the full bid amount by that date. But this request was not accepted by the Bank on 16.08.2019 and it directed him to deposit the remaining bid amount of ₹39,97,750/- along with interest up to 20.08.2019 and in default, threatened to forfeit the money already deposited by the Auction Purchaser.

CWP No. 21858 of 2019

The Auction Purchaser then filed a CWP No. 21858 of 2019 in this Court challenging the refusal of the Bank to give him extension vide its letter dt. 16.08.2019.

While issuing notice of motion on 20.08.2019 for 27.08.2019, this Court restrained the Bank from forfeiting the amount deposited by the Auction Purchaser.

The OTS-2019 dt.13.8.2019

In the meantime, on 13.08.2019, the Bank framed another OTS Policy of 2019.

It wrote a letter dt. 26.08.2019 to the borrower informing the borrower that it is eligible for settlement under the said scheme, that the OTS amount payable is ₹ 1,40,68,568/-, that 5% thereof should be deposited within 30 days, another 20% should be deposited within 60 days, and the balance should be paid in six months from the date of sanction of the OTS.

On receiving it, the borrower informed the Bank on 30.08.2019 that it is ready to settle the account, and make the payment as per the OTS Policy, but the Bank should cancel the sale. It even made deposit of ₹7,04,000/- (5% of OTS) which was acknowledged by the Bank on 30.09.2019.

CWP No.24507 of 2019

Since, there was no response to it from the Bank, the borrower filed CWP No.24507 of 2019 contending that it has a right to redeem its property by making payment of settlement account and the Bank cannot proceed to confirm the sale, once it's account is eligible for settlement, and the OTS Policy is non-discretionary and non-discriminatory.

It therefore, sought quashing of the sale notice dt. 03.05.2019 issued by the Bank, and the consequential proceedings including confirmation of bid in favour of the Auction Purchaser, and also the order dt. 13.06.2019 passed by the DRT-I Chandigarh dismissing the SA No.86 of 2019. It sought a direction to the Bank to consider its application for OTS in the SBI-OTS Policy-2019 to allow it to redeem all the properties by making payment of the OTS amount by setting aside the sale notice and the consequential proceedings.

While issuing notice in CWP No.24507 of 2019 on 05.09.2019 for 16.09.2019, this Court directed the parties to maintain *status quo*. It recorded that the borrower had deposited 5% of the amount, that the sale in favour of the Auction Purchaser was not yet confirmed and in case the borrower were to pay entire dues as per the OTS scheme, then the sale in favour of the Auction Purchaser may not be confirmed.

Contentions of Counsel for borrower

Mr. Aalok Jagga, Advocate appearing on behalf of Borrower(s) contended that in terms of the OTS Policy-SBI-2019, letter dt.26.08.2019 addressed to the bank by the petitioner is only in Annexure-I format thereunder offering OTS, and after approval, proper sanctioned letter is to be sent to the borrower in Annexure III format thereunder, indicating the terms of the OTS and the timelines for making payments thereunder. He stated that the borrower would comply with the terms of the OTS without fail and after the OTS sanction letter is issued to him, no useful purpose would be served by completing the sale in favour of the Auction Purchaser.

The Stand of the Bank

The Bank filed written statement contending that the sale in favour of the Auction Purchaser was confirmed by the Authorized Officer on 10.06.2019, and no relief can be granted to the borrower. It contended that the sale cannot now be cancelled, and in case the Auction Purchaser fails to deposit the balance consideration in terms of Rule 9(4) of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as "the Rules"), the earnest money deposited by the Auction Purchaser would stand forfeited, and property has to be put to auction again. It is stated that if the entire sale consideration is paid by the Auction Purchaser, the borrower can at best ask for one time settlement for the remaining amount.

It is contended that the right of redemption is not available to the borrower under Section 13(8) of the Act, and any such right can be exercised by it only if the sale in favor of the Auction Purchaser fails.

According to the counsel for the Bank, since the sale was confirmed, the petitioner has lost his right to redeem the property, and the right conferred upon the petitioner under Section 60 of the Transfer of the Property Act, will not prevail over the provisions of the SARFAESI Act, 2002.

Alternatively, he contended that if any relief is being given to the borrower, the Bank has a right to forfeit the earnest money deposited by the Auction Purchaser on account of his failure to deposit complete bid amount within the time specified.

According to him in CWP No. 21858 of 2019 filed by the Auction Purchaser, this Court on 20.08.2019 only directed the Bank not to forfeit the amount deposited by the Auction Purchaser, but did not absolve him from making deposit of the balance amount within the time sought by him, and so he ought to have made the deposit of the balance bid amount and since, he did not do so, it is entitled to forfeit the amount already deposited.

He also pointed out that the Bank had been disabled from doing anything further pursuant to the auction on account of the subsequent order dt. 05.09.2019 of 'status quo' passed in CWP No. 24507 of 2019.

The stand of the auction purchaser

The Auction Purchaser, on the other hand, contended that in view of the *status quo* order passed on 05.09.2019 in CWP No.24507 of 2019, he could not have deposited any amount, and since he was prevented from making deposit because of the order passed this Court on 05.09.2019, the amount deposited by him ought not to be forfeited.

The consideration by the Court

In regard to the right of the borrower to redeem the mortgage after coming into force the SARFAESI Act, 2002 this Court had held in **M/s Pal Alloys & Metal India Private Limited and Other** Vs. **Allahabad Bank and Others**[1] that amendment made to Section 13(8) of the saidAct by the Legislature did not in any way deal with the right of the mortgagor to redeem the mortgage, that Section 13(8) of the Act did not relate to the right of redemption, and that right of redemption continues to vest in the borrower till the conveyance is executed in favor of the auction purchaser and not just up to the date fixed for sale.

This Court placed reliance on the decision in the case of **Mathew Varghese Vs. M. Amritha Kumar and Others**[2] of the Supreme Court and **M/s Concern Readymix, rep. by its Proprietor Vs. Authorised Officer, Corporation Bank, Zonal Office and another** of the Telangana High Court for taking the said view.

This Court held that the amended Section 13(8) merely prohibits the secured creditor from proceeding further with the transfer of

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[1] Passed in CWP No. 6402 of 2019 decided on 23.12.2021
[2] 2014 (5) SCC 610

the secured assets by way of lease, assignment or sale; a restriction on the right of the mortgagee to deal with the property is not exactly the same as the equity of redemption available to the mortgagor; the payment of the amounts mentioned in Section 13(8) ties the hands of the mortgagee (secured creditor) from exercising any of the powers conferred under the SARFAESI Act, 2002; that redemption comes later; extinction of the right of redemption comes much later than the sale notice; and that the right of redemption is not lost immediately upon the highest bid made by a purchaser in an auction being accepted.

This Court held that such a right to redeem the mortgage conferred on the mortgagor would continue till the execution of the conveyance i.e. issuance of sale certificate in favour of the mortgagor, and that the borrower/mortgagor may redeem the mortgage at any time before the issuance of a sale certificate in favour of the Auction Purchaser.

This legal proposition is not disputed by any of the parties.

In the instant case, the Auction Purchaser has not paid full amount and sale certificate has not been issued to him till date whatever be the reason. Only his bid had been confirmed by the Authorized Officer of the Bank on 10.06.2019.

So the right of redemption of the borrower has not been lost or extinguished. Therefore, the plea of the Bank that the borrower has lost it's right of redemption because the bid of the Auction Purchaser was confirmed by the Authorized Officer on 10.06.2019, is rejected.

Once this is so, the Bank, having framed the OTS-SBI-2019 Policy on 13.08.2019, and having informed the petitioner about it on 26.08.2019 (which the petitioner accepted on 30.08.2019) has to act in furtherance thereof and issue to the petitioner a sanction of the OTS in Annexure III under the said Policy dt. 13.08.2019 and give the petitioner an opportunity to extinguish its liability under the said OTS Policy-2019.

Clause 2 (iv) of the OTS Policy mentions that '*branches are advised to defer conducting auctions under the Act from the date of issue of notice about the scheme to the borrower till the last date for receipt of applications; no auction should be conducted if any application is received and it is under process'*. It is also stated that the '*Branches may also defer any auctions for the accounts under the OTS 2019 till the dues are received or the OTS is treated as failed'*.

In our view, even though Clause 2 (iv) uses the word "auctions" it would take within its fold even actions consequent to said auctions if the sale was not concluded before coming into force the OTS scheme.

This is because the purpose of the OTS is to enable the borrower to clear it's liability to the Bank, and the intention of the Bank cannot be to continue the process of the auctions while simultaneously giving an opportunity to the borrower to clear it's liability under the OTS. Continuing with the process of auctions even after the OTS is offered to the borrower by the Bank would be inconsistent with the very idea behind the framing of OTS policy.

So we agree with the contention of the Counsel for the borrower that OTS SBI-2019 policy is retro-active and would even apply to auctions held prior thereto which have not culminated in a sale (cases where sale certificate was not issued) ; and once the borrower is entitled to the OTS, the Bank cannot proceed with the sale even if the auction was conducted prior to the coming into force of the OTS policy and thereby defeat the whole purpose of the OTS.

It is obvious that since the SBI-OTS 2019 came into effect on 13.08.2019, for that reason, the Bank rightly declined to grant extension of time to the Auction Purchaser to deposit the balance bid amount on 16.08.2019.

We do not accept the plea of respondent-Bank that the SBI OTS Policy came into effect only on 26.08.2019 when it sent a letter offering OTS to the borrower. The OTS Policy is dt.13.8.2019 and is operative from the said day itself.

Once it came into effect even if the auction had taken place prior to the said date but the same has not culminated into a sale before 13.8.2019, it is deemed to have been aborted.

It is not in dispute that the request of the Auction Purchaser made on 25.06.2019 for making deposit of the balance amount up to 20.08.2019 was accepted by the Bank on the same day. It also not in dispute that he had offered in his letter dt.25.6.2019 seeking extension of time that if the deposit is not made on 20.08.2019, the amount deposited by it can be forfeited by the Bank.

But once the SBI-OTS-Policy-2019 came into effect on 13.08.2019, and automatically kept in abeyance the auction sale of the borrower's property, the Bank cannot take advantage of the statement of the Auction Purchaser in its letter dt. 25.06.2019, and insist for forfeiting the amount deposited by the Auction Purchaser.

It cannot contend that in CWP No. 21815 of 2019 on 20.08.2019, this Court had directed it only not to forfeit the amount deposited by the Auction Purchaser and so, he ought to have deposited the full bid amount by the said date, and since he did not do so, it can forfeit the amount deposited by the Auction Purchaser.

We also reject the contention of the Bank that it waited for the Auction Purchaser to pay balance bid amount till 20.08.2019 and then only offered OTS to the borrower on 26.08.2019 for the reason that the OTS Policy having coming into effect on 13.08.2019 from that date, the process of selling the property has to be deferred (if not completed) and cannot be pursued.

Also, after 05.09.2019 when the status quo order was granted in CWP No. 24507 of 2019 there is no way, the Auction Purchaser could have done anything such as making further payment since he was party to the said order, and neither could the Bank appropriate that money towards the sale consideration offered by the Auction Purchaser.

Therefore, the plea of the Bank that it is entitled to forfeit the whole amount deposited by the Auction Purchaser or a portion thereof either on account of the letter dt. 25.06.2019 written by the Auction

Purchaser or on account of a right conferred on it under Rule 9(4) and 9(5) of the Rules is rejected.

CONCLUSION

Accordingly both the Writ Petitions are disposed in the following terms:-

The Bank shall issue the OTS sanctioned letter in the format prescribed in Annexure III to the SBI-OTS-Policy dt.13.08.2019 framed by it in token of accepting the borrower's application dt.30.08.2019 made to it within two weeks from the date of receipt of certified copy of this order**;** the entire amount deposited by the Auction Purchaser shall be refunded by the Bank to the Auction Purchaser with interest @ 6% per annum from the date of deposit till the date of refund, and the Bank shall not forfeit any portion of the amount deposited by the Auction Purchaser.

No costs.

June 02, 2022 **[M.S. RAMACHANDRA RAO]**
Ess Kay **JUDGE**

[JASJIT SINGH BEDI]
JUDGE

Whether Reportable	:	*Yes*
Whether speaking / reasoned	:	*Yes*