IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-1391-2022 in/and
CWP-24549-2021 (O&M)
Reserved on: 15.03.2022
Date of Decision: 01.04.2022

Jasbir Kaur and another . . . . Petitioners

Vs.

State Bank of India and others . . . . Respondents

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CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MR JUSTICE H.S. MADAAN

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Present: - Mr. Alok Kumar Jain, Advocate, for the petitioners.

Mr.Rajiv Joshi, Advocate, for respondents No.1 & 2.

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M.S. RAMACHANDRA RAO, J.

The Background facts

Petitioner No.1 is the proprietor of petitioner No.2, a proprietary concern.

Petitioner No.2 is engaged in the business of manufacturing of agriculture implements like Power Thresher, Ground Nut Power Thresher, Digger Machines and Hoffer Multi-Crop Thresher etc.

Petitioner No.2 had been granted CC/OD Limit facility of ₹1,75,00,000/- on 27.08.2015 by respondent No.1. The facility was sanctioned for 96 months as per the sanctioned letter dt.27.08.2015 (P1). Some immoveable property was also mortgaged by deposit of title deeds by the petitioners to the respondent No.1-Bank. Subsequently, the Bank reduced its cash credit limit to ₹1,35,00,000/-.

According to the petitioners they were regularly paying the installments, but due to demonetization and financial crunch they could not pay installments in time and the loan account of petitioner No.2 was classified by respondent No.1-Bank as a '*Non Performing Asset'* [NPA] on 01.02.2018 (P4).

Thereafter, the Bank issued a notice dt. 07.05.2018 (P7) under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for short 'the SARFAESI Act'] and demanded payment of ₹1,43,04,649.85 as on 24.04.2018.

Possession notice dt. 19.07.2018 (P8) was also issued under Section 13(4) of the SARFAESI Act to the petitioners.

Petitioner No.1 then filed CWP-20560-2018 in this Court challenging the very classification of the loan account of petitioner No.1 as NPA in terms of letter dt. 01.02.2018 issued by respondent No.1-Bank.

During the course of hearing of the said Writ petition, the petitioners offered to clear the outstanding dues or to regularize the account within a reasonable period in a time bound manner, and the counsel for respondent No.1-Bank also agreed that the said bank would consider any reasonable proposal made by the petitioners.

Therefore, the said Writ Petition was disposed of on 17.12.2018 (P9) with the following directions: -

> *"1. The petitioner shall approach the respondent-bank within one month from today by filing a detailed and comprehensive representation for clearing the outstanding dues or to regularize the loan account.*
>
> *2. The petitioner shall deposit a draft amounting to ₹3 lakhs along with the representation.*

3. *Respondent-bank shall consider the representation submitted by the petitioner sympathetically in accordance with law, after affording an opportunity of hearing to the petitioner and pass a speaking order.*
4. *The decision on the representation shall be taken at the earliest by the respondent-bank but not later than one month from the receipt of such representation.*
5. *It is clarified that in case the petitioner fails either to submit its representation within the specified time or fails to deposit a draft of ₹3 lakhs, the respondent-bank would be at liberty to proceed in accordance with law.*
7. *No coercive step shall be taken by the respondent-bank till a decision is taken by it on the representation submitted by the petitioner. However, it is clarified that the interim protection shall not be construed as an expression of opinion on the merits of the case by this Court."*

Pursuant to the above order, petitioners filed representation dt.15.01.2019 (P10) seeking regularization of the loan account granted to Petitioner No.2. Petitioners sought *inter alia* withdrawal of letter dt. 07.05.2018 (P7), waiver of penal interest, reduction of higher rate of interest, withdrawal of proceedings under the SARFAESI Act and consideration of the case of the petitioners under the *One Time Settlement Scheme of respondent No.1 Bank.*

In response thereto, a letter dt. 14.02.2019 (P11) was received by the petitioners from respondent No.1-Bank stating that it is taking a lenient view and is ready to reschedule/restructure the loan account by extending the currency period of the loan account to reduce the monthly installments; but, a condition was imposed that the petitioner should deposit ₹13.21 lakh in the loan account within 10 days. It was further made clear that the issue of waiver of penal interest was under consideration by the higher officials of the Bank and would be decided later on.

Filing of CWP-37193-2019

Since the petitioners felt that the conduct of respondent No.1-Bank was not justified, they again approached this Court by filing CWP-37193-2019 challenging the letter dt. 14.02.2019 (P11).

They contended that no personal hearing was afforded as directed by the High Court in its order dt. 17.12.2018 (P9), and that no calculations were given, the issue of waiver of penal interest was not decided, and even the direction to the petitioners to deposit ₹13.21 lakh within 10 days was arbitrary.

The said Writ Petition is still pending for 14.07.2022.

Events after filing CWP-37193-2019

10 Months after filing of CWP-37193-2019, respondent No.1-Bank wrote a letter dt.22.10.2020 (P12) offering OTS to the petitioners mentioning the OTS amount as ₹77,51,864.14. It further stated that the OTS would be processed only on deposit of minimum 5% of the OTS amount and the same would come to an end on 31.03.2021.

Petitioners accordingly made deposit of ₹3,90,000/- on 23.11.2020 vide Annexure P13

According to the petitioners they were waiting to receive the sanction letter of the OTS as was mentioned in letter dt.22.10.2020 (P12) but they never received it. According to them when they visited the Bank, they were informed that the same would be communicated soon.

On 12.01.2021 (P14), however, petitioners' received a letter stating that the OTS was cancelled on the ground that the petitioners failed to deposit the balance OTS amount as per the terms and conditions of the OTS-2020. The respondent-Bank indicated that it would be proceeding against the petitioners under the SARFAESI Act by selling the mortgaged property.

The petitioner No.1 immediately approached respondent No.2-Bank vide letter (P15) contending that after making deposit of ₹3,90,000/-, she was under the impression that the OTS amount can be paid in 8 months and was making arrangements for depositing the remaining amount; that she was ready and willing to deposit the remaining amount under the OTS offered; and the Bank should stop proceedings for recovery under the SARFAESI Act,2002. Petitioners also enclosed a cheque of ₹2,50,000/- to show their *bona fide* along with the letter (P15).

In the meantime, the Bank had filed OA-377-2021 before the DRT-II, Chandigarh and summons were issued in the said proceedings to the petitioners.

The Bank had also initiated steps under Section 14 of the SARFAESI Act before the Deputy Commissioner, Sirsa for taking possession of the secured assets and notices were issued to petitioners asking the petitioners to appear before him on 12.10.2021.

Petitioner No.1 then gave a representation on 11.10.2021 (P18) to respondent No.1-Bank showing her willingness to abide by the OTS and thereafter filed the present Writ Petition.

Contentions of the petitioners

It is the specific contention of the counsel for the petitioners that the action of the respondents-Bank in cancelling the OTS without either accepting or declining the OTS after ₹3,90,000/- was deposited by the petitioners on 23.11.2020, is illegal and arbitrary; and this shows the scant regard of the Bank to the directions given by this Court on 17.12.2018 (P9) in CWP-20560-2018. They contend that respondents No.1 & 2 are exhibiting a vindictive attitude against them and they have acted in a *mala fide* manner. They contend that respondent no.1 had never communicated the OTS sanction letter, and without doing so, it cannot cancel the OTS on the ground that the terms of the OTS sanctioned were not complied with by the petitioners.

Events after filing of the Writ Petition

On 03.12.2021, this Court issued notice of motion.

On that day, the counsel for the petitioner handed over a cheque No.437721 dt. 03.12.2021 for ₹23,00,000/- to the counsel for respondents No.1 & 2.

Therefore, this Court granted stay of dispossession of the petitioners from the subject property until further orders.

The petitioners filed on 7.2.2022 CM-1391-2022 in this Writ petition for placing on record a fresh offer for OTS made on 18.01.2022 by the respondent No.1-Bank for ₹72,63,524.11.

In response to this application, respondents No.1 & 2 filed on 17.2.2022 *for the first time* the sanction letter dt.26.11.2020 sent to the

Ellenabad address and the postage register showing proof that the said letter was dispatched to the address shown at Ellenabad.

Since respondents No.1 & 2 have not disputed the sanction of fresh OTS dt.18.01.2022 to the petitioners, CM-1391-2022 is ordered after taking on record the documents by petitioners and also the documents filed along with the reply to the said CM by the respondents 1 and 2 i.e. the OTS sanction letter dt.26.11.2020 and the postal record of the same.

Written statement by respondents No.1 & 2

Written statement was filed on behalf of respondents No.1 & 2 contending that the petitioners had approached the Court after lapsing of the OTS on 31.03.2021, and long after the letter dt.12.01.2021 (P14) cancelling OTS was issued, and so the Writ Petition should be rejected on the ground of delay and laches.

They contended that the OTS proposal made by the petitioners as per OTS 2020 scheme was ended on 31.03.2021 as per letter dt. 22.10.2020 (P12).

It is alleged that the petitioners were informed about the sanction of OTS vide letter dt.26.11.2020. A Postage Register is also filed with the reply filed on behalf of respondents No.1 & 2.

Consideration by the Court

Perusal of letter dt.26.11.2020 issued by respondent No.1 to the petitioners (sanctioning the OTS) indicates that the said letter was sent to the following address:-

> *"To,*
> *M/s Jai Jagjit Agro Industries,*
> *Main Market, Ellenabad,*
> *Ellenabad,*

Haryana, PIN:125055"

However, the perusal of letter addressed by the Bank to petitioner No.2 dt.22.10.2020 (P12) (informing the petitioners to comply with certain terms of OTS *before* sanctioning the OTS) shows the following address:

> *"To,*
> *M/s Jai Jagjit Agro Industries,*
> *Smt. Jasbir Kaur w/o Sh. Kulwant Singh,*
> *Sirsa Road, Opposite Sarva Haryana Gramin Store,*
> *Sirsa,*
> *Haryana, PIN:125102"*

Even the OTS *cancellation* letter dt.12.01.2021 (P14) shows the above address only.

According to the petitioners the correct address is the address in Sirsa, Haryana but the OTS sanction letter dt.26.11.2020 (A2) was sent to Ellenabad i.e. to a wrong address. The counsel for respondent Nos. 1 and 2 does not dispute this fact.

Therefore, the said OTS sanction letter dt.26.11.2020 never reached the petitioners because of mention of wrong address therein. This fact cannot be denied by the respondents.

When the said OTS sanction letter dt. 26.11.2020 never reached the petitioners and they were not aware of the terms contained therein, they cannot be accused by respondent No.1-Bank of failing to comply with the deposit as per the terms thereof, and on the said ground, they cannot cancel the OTS vide letter dt.12.01.2021 (P14). Therefore the said cancellation of the OTS vide Letter dt.12.10.2021 (P14) is declared as illegal, arbitrary and is set aside.

The plea of the respondents about laches is equally untenable because the petitioners contend that after receiving the 12.1.2021 (Annexure P14), they did approach the Bank to understand whether the OTS sanction letter was communicated to them and why it was cancelled , but there was no communication from respondents on this aspect.

This court is also bound by the order passed by the Supreme Court extending the period of limitation from time to time for availing legal remedies in **Suomotu W.P 3 of 2020** initially on 23.3.2020 till 14.3.2021, and again reviving the same in Miscellaneous Application No.65 of 2021 in the said W.P. on 23.9.2021 granting exemption from limitation in all proceedings including in High Courts w.e.f. 15.3.2020 till 2.10.2021. Thereafter on 10.1.2022, the said order was extended in Misc. Application No. 21 of 2022 till 28.2.2022.

Also as stated above the petitioners filed CM-1391-2022 in this Writ petition for placing on record a fresh offer for OTS made on 18.01.2022 by the respondent No.1-Bank for ₹72,63,524.11.

In response to this application, respondents No.1 & 2 filed *for the first time* the sanction letter dt.26.11.2020 sent to the Ellenabad address and the postage register showing proof that the said letter was dispatched to the wrong address shown at Ellenabad. Then only the truth came out about sending the OTS sanction letter dt.26.11.2020 to the wrong address.

So the plea of laches raised by the respondent Nos. 1 and 2 is rejected .

In view of the erroneous cancellation of the OTS sanctioned on 26.11.2020 to the petitioners on 12.01.2021 (P14), respondents No.1 &

2 are directed to give credit to the sum of ₹3,90,000/- deposited by the petitioners on 23.11.2020 and to ₹23 lakh deposited by them on 03.12.2021, and treat them as payments having been made towards the OTS sanctioned to the petitioners on 18.01.2022. So the respondent Nos. 1 and 2 cannot insist that the petitioners should again deposit 10% of the OTS amount sanctioned by ignoring deposits already made.

Accordingly, the Writ Petition is allowed; cancellation of the OTS letter dt.12.01.2021 (P14) by respondents No.1 & 2 is set aside; and the respondents are directed to treat the petitioners as having given willingness to settle the dues in terms of the letter dt.18.1.2022 and proceed accordingly. The respondents are further directed to give credit to the amounts of ₹23 lakh and ₹3,90,000/- paid to respondents No.1 & 2 as payments having been made under the OTS sanctioned on 18.01.2022, and treat the petitioners as having satisfied the conditions of pre-deposit towards the said OTS. They shall communicate to the petitioners sanction pursuant to the letter dt.18.01.2022 so that the petitioners can take further steps in that regard. No costs.

(M.S. Ramachandra Rao)
Judge

01.04.2022
Vivek

(H.S. Madaan)
Judge

1. *Whether speaking/reasoned?* *Yes/No*
2. *Whether reportable?* *Yes/No*