* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 29th NOVEMBER, 2022

IN THE MATTER OF:

\+ **LPA 676/2022& CM APPLs. 50205/2022, 50206/2022, 50208/2022**

SUPERTECH REALTORS PRIVATE LIMITED .....Appellant

Through: Ms. Maninder Acharya, Senior Advocate with Mr. Ishan Dewan, Mr.V. Siddharth, Mr. Viplav Acharya, Ms. Udita and Ms. PriyalBopana, Advocates

versus

BANK OF MAHARASHTRA ..... Respondent

Through: Mr. Nishant Awana, Mr. G.S. Awana, Advocates with Mr. Vaibhav Yadav, Chief Manager, Bank of Maharashtra.

Ms. Monika Arora, CGSC with Mr.Yash Tyagi, Mr. ShivamRaghuwanshi, Advocates

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Aggrieved by the dismissal of the writ petition *vide* Order dated 17.11.2022 passed by the learned Single Judge in W.P.(C)15854/2022, the writ petitioner seeks to assail the said order by way of the instant appeal.

2. The facts in brief, as narrated by the Appellant, reads as follows:-

i. It is stated that the Appellant is a part of Supertech Group, which is a real estate developer. It is stated that the Appellant approached the consortium of Banks led by Union Bank of India and consisting of Bank of Maharashtra, Central Bank of India, Oriental Bank of Commerce seeking financial assistance for a project, namely, 'Supernova' at Sector 94, Noida.

ii. It is stated that a financial assistance of Rs.735 crores was agreed to be lent by the consortiumof Banks,and a sum of Rs.678.22 crore was disbursed. It is stated that a term loan of Rs.150 crores was also sanctioned by the consortium of Banks.

iii. It is stated that on 29.09.2018, the account of the Appellant was classified as Non-Performing Asset (NPA).

iv. Negotiations were held between the Appellant and the consortium of Banks. A One-Time Settlement (OTS) was entered into between the Appellant and the consortium of Banks for the sum of Rs.121.43 crores. The Appellant sought a modification of theOTSand the same was modified.The amount to be paid was reduced from 121.43 crores to Rs.120.94 crores. The amended terms of sanction reads as under:-

Amended Terms of Sanction
Rs.120.94 crore *(LB of Rs.97.33 crore plus Un-applied interest of Rs.23.61 crore,total of Rs.120.94 crore) be accepted in full and final settlement of the dues ofA/C-Supertech Realtors Pvt Ltd and payable as under in line with lead banksanction: -* *1. Upfront amount Rs.9.16 crore has already been received in loan accountthrough RERA cut back and own sources in line with Lead Bank UBI.* *2. Balance amount of Rs.111.78 crore will be paid in 24 monthly instalments ofRs.4.66 crore after 3 months moratorium from the date of conveying originalsanction to the borrower.*

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3. Deferred period interest @ 1 Year MCLR i.e. 7.25% p.a. shall be charged ondiminishing balance after 3 months from the date of conveying of originalsanction to the borrower. *4. The monthly installment along with interest@ 1 Year MCLR has to be paid inthe first week of the month which is to be considered after 3 months from the dateof conveying original sanction.* *Processing fees be waived in line with lead bank sanction.*

v. It is stated that the dispute arose between the Bank and the Appellant stating that the Appellant defaulted in the payment of monthly instalments of Rs.4.66 crores each, which was not paid by the Appellant despite letters dated 11.10.2022, 14.10.2022 and 01.11.2022. The Appellant challenged the letters demanding the payment sought for by the consortium of Banks,contending that the amounts were not due and payable and approached this Court by filing a writ petition with the following prayers:-

> *"(a) Issue an appropriate writ/order quashing the Impugned Letters dated11.10.2022, 14.10.2022 and 01.11.2022;*
>
> *(b) Issue an appropriate writ/order declaring that the moratorium period of threemonths under the Sanction letter dated 18.08.2022 has to be calculated from18.08.2022;*
>
> *(c) Issue an appropriate writ/order directing the Respondent to extend the periodof moratorium for a period of 6 months from 19.11.2022;*
>
> *(d) Pass any other or further orders which this Hon'ble Court may deem fit in thepeculiar facts and circumstances of the present case."*

vi. The learned Single Judge dismissed the writ petition stating that the writ petition seeks for alteration of the terms of the contract which can only be done by way of mutual consent in terms of Section 62 of the Indian Contract Act, 1872. It is this order which is sought to be challenged in the present appeal.

3. Heard learned Counsel for the parties, and perused the material on record.

4. The facts as presented by the Appellant in the LPA shows that the Appellant was not able to repay the loan sanctioned by the consortium of Banks and the account of the Appellant was classified as NPA on 29.09.2018. A One-Time Settlement was actually entered into after four years on 15.06.2022 for an amount of Rs.121.43 crores. The Appellant sent a letter wanting an amendment to the One-Time Settlement and the amount was further reduced from Rs.121.43 crores to Rs.120.94 crores. Under the amended terms, a sum of Rs.9.16 crores had been received in the loan account through RERA cut back and the balance amount of Rs.111.78 crore was to be paid in 24 instalments of Rs.4.66 crores after three months moratorium from the date of conveying of original sanction to the borrower.

5. It had been contended before the learned Single Judge that since the OTS was amended on 18.08.2022, the three months moratorium period had to be calculated from 18.08.2022 and not from 15.06.2022, which was the date of the original OTS.That argument was rightly rejected by the learned Single Judge stating that the three months moratorium was to be calculated from the date of conveying**'original sanction'**to the borrower which was sanctioned on 15.06.2022. Learned Single Judge observed that the Appellant

failed to pay first instalment of Rs.4.66 crores by 15.09.2022, which was the date of expiry of the moratorium and till date, had paid only Rs.2.61 crores.

6. This Court does not find any infirmity with the order of the learned Single Judge. The amended terms of sanction made it very clear that the amount of Rs.111.78 crores had to be paid in 24 instalments after three months of moratorium from the date of conveying original sanction to the borrower and the original sanction dated 15.06.2021. Therefore, the first instalment was payable by 15.09.2022 which had not been paid by the Appellant.

7. As rightly observed by the learned Single Judge, that the writ petition was an attempt for renovation of contract which cannot be permitted in a writ petition. It is settled law that High Courts while exercising jurisdiction under Article 226 of the Constitution of India cannot rewrite the contract entered into between the parties.

8. In Orissa State Financial Coporation v. Narshingh Ch. Nayak &Ors., (**2003) 10 SCC 261**, the Apex Court has observed as under:-

> *"**6**. The said order is under challenge in this appeal. On a plain reading of the impugned order it is manifest that the High Court while considering the writ petition filed by the owner of the vehicle for quashing of the notice of auction-sale and for other consequential reliefs has passed order drawing up a fresh contract between the parties and has issued certain further directions in the matter; the Corporation has been directed to advance a fresh loan to the writ petitioner to enable him to purchase a new truck; to enter into agreement for realization of the balance loan amount in accordance with law; to write off the remaining amount of Rs 16,500 and to order waiving of the interest till date etc. The order, to say the least, was beyond the scope of the writ petition which was being*

> *considered by the High Court and beyond the jurisdiction of the Court in a contractual matter. No doubt, while exercising its extraordinary jurisdiction under Article 226 of the Constitution the High Court has wide power to pass appropriate order and issue proper direction as necessary in the facts and circumstances of the case and in the interest of justice. But that is not to say that the High Court can ignore the scope of the writ petition and nature of the dispute and enter the field pertaining to contractual obligations between the parties and issue such directions annulling the existing contract and introducing a fresh contract in its place."*

9. The One-Time Settlement which has been entered into between the consortium of Banks and the parties is purely a contract and a borrower cannot ask for alterations of the same by filing petitions under Article 226 of the Constitution of India. The terms can be altered only through mutual consent between the parties.

10. In view of the above, the appeal fails and the same is dismissed along with all the pending applications.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

NOVEMBER 29, 2022
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