



W.P.No.35065 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2023

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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1.M/s.CBC Fashions (Asia) Pvt. Ltd.,
rep. by its Director T.R.Vijayakumar,
No.11, M.R. Nagar,
C.B.C. Building, Dharapuram Road,
Tirupur-641 608.

2.T.R.Vijayakumar

.. Petitioners

Vs

1.The Authorised Officer,
State Bank of India,
Stressed Asset Management Branch,
1112, Raja Plaza, Avinashi Road,
Coimbatore-641 037.

2.The State Bank of India,
rep. by its Deputy General Manager,
SAMB Coimbatore (16454)
Raja Plaza, 1st Floor,
1112, Avinashi Road,
Coimbatore-641 037.

.. Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the entire records pertaining to the order dated 31.10.2022 passed in I.A.No.4212 of 2022 in S.A.No.992 of 2022 on the file of Debts Recovery Tribunal at Coimbatore so far as passing conditional order of directing the petitioner to pay Rs.29,00,00,000/- to the respondent's bank and the consequential order dated 20.12.2022 in I.A.No.528 of 2022 in A.I.R.No.423 of 2022 on the file of the Debt Recovery Appellate Tribunal at Chennai and quash the same consequently direct the respondent to invoke Rule 8(5)(d) of the Security Interest (Enforcement) Rules 2022 by considering the Memorandum of Understanding with the interested purchaser's dated 09.03.2022, 06.04.2022, 20.04.2022, 02.05.2022 so as to enable the petitioner to pursue the compromise advisory letter communicated by the second respondent through e-mail communication dated 28.10.2022.

For the Petitioners : Mr.T.Murugamanickam
Senior Counsel
for Mr.R.Selvakumar

For the Respondents : Mr.M.L.Ganesh

ORDER

(Order of the court was made by the Hon'ble Acting Chief Justice)

W.M.P.No.34509 of 2022 filed to permit the petitioners to file a single writ petition is allowed, inasmuch as they have paid separate court-fee.



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2. The petitioners have come to this court challenging the impugned order dated 20.12.2022 passed by the Debt Recovery Appellate Tribunal, Chennai, directing the petitioners to deposit 25% of the outstanding amount on or before 3.1.2023, as against the conditional order dated 31.10.2022 passed by the Debts Recovery Tribunal, Coimbatore, directing the petitioners to pay 50% of the outstanding amount.

3. Mr.T.Murugamanickam, learned Senior Counsel appearing on behalf of the petitioners, emphatically submitted that when the petitioners made an application for One-Time Settlement (OTS) and the same is pending consideration, the Debts Recovery Tribunal and the Debt Recovery Appellate Tribunal ought not to have directed the petitioners to deposit 50% or 25% of the outstanding amount as a pre-condition for entertaining the appeal. Learned Senior Counsel for the petitioners submitted that the respondent/bank may be directed to grant the benefit of OTS to the petitioners.

4. We are unable to find any merit in the aforesaid submission



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made by learned Senior Counsel for the petitioners in view of the law enunciated by the Supreme Court in the case of ***Bijnor Urban Cooperative Bank Limited v. Meenal Agarwal and others, 2021 SCC OnLine SC 1255***, wherein it has been held as under:

"30. The sum and substance of the aforesaid discussion would be that no writ of mandamus can be issued by the High Court in exercise of powers under Article 226 of the Constitution of India, directing a financial institution/bank to positively grant the benefit of OTS to a borrower. The grant of benefit under the OTS is always subject to the eligibility criteria mentioned under the OTS Scheme and the guidelines issued from time to time. If the bank/financial institution is of the opinion that the loanee has the capacity to make the payment and/or that the bank/financial institution is able to recover the entire loan amount even by auctioning the mortgaged property/secured property, either from the loanee and/or guarantor, the bank would be justified in refusing to grant the benefit under the OTS Scheme. Ultimately, such a decision should be left to the commercial wisdom of the bank whose amount is involved and it is always to be presumed that the financial institution/bank



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shall take a prudent decision whether to grant the benefit or not under the OTS Scheme, having regard to the public interest involved and having regard to the factors which are narrated hereinabove.

31. In view of the aforesaid discussion and for the reasons stated above, we are of the firm opinion that the High Court, in the present case, has materially erred and has exceeded in its jurisdiction in issuing a writ of mandamus in exercise of its powers under Article 226 of the Constitution of India by directing the appellant-Bank to positively consider/grant the benefit of OTS to the original writ petitioner. The impugned judgment and order passed by the High Court is hence unsustainable and deserves to be quashed and set aside and is accordingly quashed and set aside."

[emphasis supplied]

5. In the light of the decision of the Supreme Court in ***Bijnor Urban Cooperative Bank Limited***, supra, no borrower can, as a matter of right, pray for grant of benefit of OTS scheme. That apart,



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this court exercising jurisdiction under Article 226 of the Constitution of India cannot direct a bank or financial institution to positively grant the benefit of OTS scheme to a borrower. Such decision should be left to the commercial wisdom of the bank or financial institution.

6. Mr.T.Murugamanickam, learned Senior Counsel appearing for the petitioners, after exhausting all the legal submissions, finally requested this court to grant a reasonable time to comply with the conditional order passed by the Debt Recovery Appellate Tribunal.

7. Mr.M.L.Ganesh, learned counsel appearing for the respondent/bank, fairly submitted that the petitioners may be granted two weeks' time to comply with the conditional order passed by the Debt Recovery Appellate Tribunal.

8. In view of the submission made by learned counsel appearing for the respondent/bank, we dispose of the writ petition by granting two weeks' time to the petitioners to comply with the



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conditional order passed by the Debt Recovery Appellate Tribunal.

It is made clear that if the petitioners fail to comply with the conditional order within two weeks' from today, the Debt Recovery Appellate Tribunal shall proceed further in accordance with law.

There will be no order as to costs. Consequently,
W.M.P.No.34512 of 2022 is closed.

(T.R., ACJ.) (D.B.C., J.)
02.01.2023

Index : No
Neutral Citation : No

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To:

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AND
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(sasi)

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