

CM-18686-CWP-2022 in/and
CWP-6640-2021 (O & M)

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2023:PHHC:064238-DB

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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2023:PHHC:064238-DB

CM-18686-CWP-2022 in/and
CWP-6640-2021 (O & M)
Date of Decision: 04.05.2023

Veena Rani

.....Petitioner(s)

Versus

State of Haryana and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. I.S. Ratta, Advocate,
for the applicant-petitioner.

Mr. Aman Bahri, Addl. A.G., Haryana.

Mr. Rahul Garg, Advocate,
for Mr. D.K. Singal, Advocate,
for respondent No.3.

G.S.SANDHAWALIA, J. (Oral)

1. Challenge in the present writ petition filed under Articles 226 and 227 of the Constitution of India is to the securitization proceedings initiated under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the Act').

2. Reply has been filed, a perusal of which would go on to show that Rs.73,51,681/- was the outstanding on 13.04.2022. An offer of Rs.21,59,869/- as one time settlement was made by the petitioner, which was rejected by the respondent No.3-Bank vide letter dated 13.04.2022 (Annexure R-3). The financial institution noticed that there was outstanding of Rs.73,51,681/- and, therefore, the settlement was not reasonable and acceptable and the same was rejected, keeping in mind the value of the

secured asset.

3. We do not find any ground as such to interfere with the order of the financial institution rejecting the OTS keeping in view the law laid down by the Apex Court in ***The Bijnor Urban Cooperative Bank Ltd. and others vs. Meenal Agarwal and others, 2022 (2) PLR 408*** wherein it was held that the bank cannot be compelled to enter into the OTS if the same is not financially viable. Resultantly, the question of law was reiterated by holding as under:-

“7. In the present case, a conscious decision was taken by the Bank as well as the Settlement Advisory Committee which is reflected from the Board’s Resolution dated 28.12.2020 and the decision dated 08.01.2021. Even personal hearing was afforded to the original writ petitioner by the Settlement Advisory Committee on 25.02.2021. The High Court in the impugned judgment and order has observed that no opportunity was given to the original writ petitioner, which is factually incorrect. Therefore, the decision cannot be said to be in violation of the principle of natural justice.

8. While passing the impugned judgment and order, the High Court, in response to the submissions on behalf of the Bank that, there are all possibilities of recovery of the loan amount and the efforts are being made to recover the amount by initiating proceedings under the [SARFAESI Act](#) and that the properties mortgaged can be auctioned, has observed that the proceedings under the [SARFAESI Act](#) have remained pending for seven years and the Bank has been unable to recover its dues and therefore the hope of recovery is illusory. This conclusion is not supported by any material on record. Merely because the proceedings under the [SARFAESI Act](#) have remained pending for seven years, the Bank cannot be held responsible for the same. No fault of the bank can be found. What is

required to be considered is a conscious decision by the Bank that the Bank will be able to recover the entire loan amount by auctioning the mortgaged property and a due application of mind by the Bank that there are all possibilities to recover the entire loan amount, instead of granting the benefit under the OTS Scheme and to recover a lesser amount. It is ultimately for the Bank to take a conscious decision in its own interest and to secure/recover the outstanding debt. No bank can be compelled to accept a lesser amount under the OTS Scheme despite the fact that the Bank is able to recover the entire loan amount by auctioning the secured property/mortgaged property. When the loan is disbursed by the bank and the outstanding amount is due and payable to the bank, it will always take a conscious decision in the interest of the bank and in its commercial wisdom.

9. Even otherwise, as observed hereinabove, no borrower can, as a matter of right, pray for grant of benefit of One Time Settlement Scheme. In a given case, it may happen that a person would borrow a huge amount, for example Rs. 100 crores. After availing the loan, he may deliberately not pay any amount towards installments, though able to make the payment. He would wait for the OTS Scheme and then pray for grant of benefit under the OTS Scheme under which, always a lesser amount than the amount due and payable under the loan account will have to be paid. This, despite there being all possibility for recovery of the entire loan amount which can be realised by selling the mortgaged/secured properties. If it is held that the borrower can still, as a matter of right, pray for benefit under the OTS Scheme, in that case, it would be giving a premium to a dishonest borrower, who, despite the fact that he is able to make the payment and the fact that the bank is able to recover the entire loan amount even by selling the mortgaged/secured properties, either from the borrower and/or guarantor. This is because under the OTS Scheme a debtor has to pay a lesser amount

than the actual amount due and payable under the loan account. Such cannot be the intention of the bank while offering OTS Scheme and that cannot be purpose of the Scheme which may encourage such a dishonesty.

10. If a prayer is entertained on the part of the defaulting unit/person to compel or direct the financial corporation/bank to enter into a one-time settlement on the terms proposed by it/him, then every defaulting unit/person which/who is capable of paying its/his dues as per the terms of the agreement entered into by it/him would like to get one time settlement in its/his favour. Who would not like to get his liability reduced and pay lesser amount than the amount he/she is liable to pay under the loan account? In the present case, it is noted that the original writ petitioner and her husband are making the payments regularly in two other loan accounts and those accounts are regularised. Meaning thereby, they have the capacity to make the payment even with respect to the present loan account and despite the said fact, not a single amount/installment has been paid in the present loan account for which original petitioner is praying for the benefit under the OTS Scheme.

11. 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 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.”

4. However, since the challenge is also to the order dated 20.02.2015 (Annexure P-16) passed under Section 14 of the Act and on an earlier occasion on 16.01.2023, it was noticed that the said order passed by the District Magistrate, Karnal is cryptic and there is no satisfaction recorded, we are of the considered opinion that the limited prayer made is justified. The Division Bench in ***Allahabad Bank vs. District Magistrate, Ludhiana and others, 2021 (4) RCR (Civil) 571*** has held that the satisfaction of the Magistrate has to be recorded and a 9 point affidavit has to be filed as per the provisions of Section 14 of the Act.

5. In such circumstances, we quash the order dated 20.02.2015 (Annexure P-16) passed under Section 14 of the Act. Liberty is given to the bank to initiate proceedings to take possession in accordance with law. It is also open to the petitioners to approach the Tribunal under Section 17 of the Act against the notice issued under Section 13(4) of the Act, which has been time and again laid down by the Apex Court and recently reiterated in ***SLP No. 22021-22022 of 2022, M/s. South Indian Bank Ltd. and others vs. Naveen Mathew Philip and another*** decided on 17.04.2023 wherein, it has been held that only in exceptional cases, the resort as such is to be taken to Articles 226 and 227 of the Constitution of India in financial matters. The relevant observations in *South Indian Bank's case (supra)* read thus:-

that the powers conferred under Article 226 of the Constitution of India are rather wide but are required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme qua a statute, more so in commercial matters involving a lender and a borrower, when the legislature has provided for a specific mechanism for appropriate redressal.”

6. The writ petition stands disposed of. Accordingly, CM-18686-CWP-2022 for stay of dispossession has been rendered infructuous and is disposed of as such.

(G.S. SANDHAWALIA)
JUDGE

04.05.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes
No