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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-9147-2022 (O&M)
Date of Decision : 13.10.2023

Amit Verma ....Petitioner

VERSUS

LIC Housing Fianance Ltd. ....Respondent

CORAM : HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Kushagra Mahajan, Advocate for the petitioner.

Mr. Sumit Batra, Advocate for the respondent.

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LISA GILL, J. (Oral)

1. Prayer in this writ petition is for directing the respondent - LIC Housing Finance Limited, to consider and accept the proposal for One Time Settlement submitted by the petitioner.

2. Undeniably the prayer as above is in teeth of the judgment of Hon'ble Supreme Court in the case of **'The Bijnor Urban Cooperative Bank Limited, Bijnor and others vs. Meenal Agarwal and others', 2021 SCC Online SC 1040.**

3. Learned counsel for the respondent while raising an objection qua entertainability of the writ petition informs that possession of the property has been taken on 28.09.2023.

4. We have heard learned counsel for the parties.

5. Prayer in this writ petition is for a direction to the respondent non-banking financial institution to accept petitioner's proposal for One Time Settlement.

6. It is a settled position that no borrower/guarantor has any vested right to seek a One Time Settlement. Hon'ble the Supreme Court in the case of **'The Bijnor Urban Cooperative Bank Limited, Bijnor and others vs. Meenal Agarwal and others', 2021 SCC Online SC 1040** while examining this issue held as under :-

> "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.
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> 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.

7. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to the petitioner to avail the remedy/remedies as may be available to him in accordance with law. Needless to say that it shall always be open for the parties to arrive at any mutually acceptable settlement.

8. Pending miscellaneous applications, if any, stand disposed of accordingly.

(LISA GILL)
JUDGE

October 13, 2023
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(RITU TAGORE)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No