2023:PHHC:122629-DB

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

CM-15894-CWP-2023 and
CM-15896-CWP-2023 in/and
CWP-8407-2023 (O&M)
Date of Decision: September 19, 2023

SUMER SINGH ...... Petitioner

Versus

STATE BANK OF INDIA AND ORS ..... Respondents

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

Present: Mr.Deepkaran Dalal, Advocate for the applicant-petitioner.

Mr.Vikas Chatrath, Advocate for respondent No. 1.

Mr. Himmat Singh, Addl. AG, Haryana for respondent No.3.

****

LISA GILL, J.

CM-15894-CWP-2023

Prayer in this application is for preponement of the hearing of the writ petition, which is listed on 27.09.2023.

Notice of the application.

Mr. Vikas Chatrath, Advocate accepts notice on behalf of respondent No. 1 and Mr. Himmat Singh, Addl. AG, Haryana accepts notice on behalf of respondent No.3. They raise no objection to preponement of hearing of this writ petition.

Learned counsel for the parties at ad idem that arguments in the main writ petition be heard.

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At request and with consent of learned counsel for the parties, writ petition is taken up for hearing today itself.

Application is disposed of, accordingly.

CWP-8407-2023 (O&M)

1. This writ petition has been filed seeking direction to respondent No. 1 to consider petitioner's case for One Time Settlement or re-negotiation as per RBI Regulations. Petitioners had availed loan facility from respondent No. 1 for construction of a godown for storage of agricultural produce. It is submitted that tripartite agreement had been entered in between the petitioner, respondent – Bank and respondent No. 3 i.e. The Haryana State Co-operative Supply and Marketing Federation Limited. Due to respondent No. 3 not depositing the rent amount, default in payment of installments by the petitioner to respondent No. 1 occurred. Petitioner's account was declared NPA and notice under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') was issued on 04.03.2023 directing the petitioner to deposit sum of Rs.2,96,83,195/-. Petitioner, it is submitted, filed Civil Suit (Annexure P3) against respondent No. 3 wherein said respondent was directed to deposit monthly rent since from filing of civil suit (15.12.2022) till further orders vide order dated 13.02.2023.

2. Learned counsel for the petitioner submits that respondent – Bank has now initiated proceedings under Section 14 of SARFAESI Act. It is submitted that in the given circumstances, respondent – Bank should be directed to accept One Time Settlement or restructure the loan.

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3. Learned counsel for the petitioner is unable to deny that this prayer is clearly in the teeth of judgment of Hon'ble the Supreme Court in ***The Bijnor Urban Cooperative Bank Ltd. Vs. Meenal Agarwal and others, 2022 AIR (SC) 56***. The issues/questions for consideration by the Hon'ble Supreme Court were as under:-

> *i) Whether benefit under the OTS Scheme can be prayed as a matter of right?;*
> *ii) Whether the High Court in exercise of powers under Article 226 of the Constitution of India can issue a writ of mandamus directing the Bank to positively consider the grant of benefit under the OTS Scheme and that too de hors the eligibility criteria mentioned under the OTS Scheme?*

4. The Hon'ble Supreme Court in the above said case held 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. It was held that:-

> "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. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

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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.

5. Furthermore, dispute between the petitioner and respondent No.3 cannot have any bearing on the liability of the petitioner to discharge the debt due to the respondent – Bank.

6. Keeping in view the facts and circumstances as above, this writ petition is dismissed. Needless to say, parties are at liberty to arrive at any mutually agreeable settlement and petitioner is at liberty to challenge the SARFAESI proceedings in accordance with law.

7. Pending application(s), if any, stand(s) disposed of.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

September 19, 2023
rts

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

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