IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

112+201 ***2023:PHHC:071753-DB***

CM-8297-CWP-2023 in/and
CWP-15750-2022
Date of Decision: 17.05.2023

M/s. Prerna Strips and another .....Petitioner(s)

Versus

District Magistrate, SAS Nagar and others ....Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. H.S. Jagdev, Advocate,
for Mr. Aalok Jagga, Advocate,
for the petitioners.

Mr. Navneet Singh, Sr. DAG, Punjab.

Mr. Arvind Rajotia, 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 rejection of the One Time Settlement by the bank vide letter dated 29.06.2022 (Annexure P-16) on the ground that the outstandings were Rs.12.90 crores and the offer was for Rs.3.40 crores and which had thus been declined by the competent authority and the petitioners were asked to improve the offer substantially.

2. Apparently, securitization proceedings were initiated and notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the Act') was issued on 01.02.2020 (Annexure P-3) wherein, it was mentioned that the

account has been classified as Non Performing Asset on 31.01.2020 and the outstandings were Rs.9,65,85,499.33/-. Thereafter, the symbolic possession was taken of the mortgaged property as described in the notice dated 09.02.2021 (Annexure P-5).

3. It is not disputed that an application under Section 14 of the Act was allowed on 28.06.2022 (Annexure P-15) by the District Magistrate, SAS Nagar. Resultantly, jurisdiction of this Court had been invoked. It is pertinent to notice that against the huge outstandings, the petitioners have not even been forthcoming to deposit 25% of the amount to show their *bonafides* by producing a demand draft of a reasonable amount.

4. In such circumstances, we are of the considered opinion that extra ordinary writ jurisdiction of this Court is not liable to be entertained. The Apex Court in ***The Bijnor Urban Cooperative Bank Ltd. and others vs. Meenal Agarwal and others, 2022 (2) PLR 408*** has held that it is for the financial institution to decide whether the OTS is to be accepted or not as the banks cannot take a huge hit regarding their balance sheets and the borrower as such cannot dictate as such as to how much he will pay. It was further 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."*

5. Keeping in view the above, we dismiss the writ petition with liberty to the petitioners to avail their alternative remedy in accordance with law before the Tribunal within a period of two weeks in view of the law laid down in ***M/s. South Indian Bank Ltd. and others vs. Naveen Mathew Philip and another, 2023 (2) RCR (Civil) 771.***

6. Needless to say since the interim order was passed on

22.07.2022, if the Securitization application is filed within a period of two weeks, the interim order shall continue and thereafter, it is open to the Tribunal to fix the terms of any interim protection to be granted in case it feels fit. Needless to say that since the matter was pending here, the Tribunal will proceed to decide the Securitization application on merits keeping in view the provisions of Section 14 of the Limitation Act, 1963.

7. All pending miscellaneous applications also stand disposed of accordingly.

(G.S. SANDHAWALIA)
JUDGE

17.05.2023
shivani

(MANISHA BATRA)
JUDGE

Whether reasoned/speaking Yes
Whether reportable No