2023:PHHC:144910-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-17860-2023
Date of Decision: November 14, 2023

SUMATI GUPTA ...... Petitioner

Versus

DENA BANK ..... Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Narender Kaur, Advocate for the petitioner.

Mr. Gaurav Goel, Advocate for the respondent.

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LISA GILL, J.

1. Prayer in this writ petition is for directing respondent – Bank to decide representation dated 01.03.2023 (Annexure P9) submitted by petitioner and consider her case sympathetically for One Time Settlement (OTS). It is further prayed that respondent should be restrained from taking any coercive methods for recovery of amount due keeping in view proposal for OTS submitted by petitioner.

2. It is submitted that petitioner had availed financial assistance of ₹25 lakhs from Punjab National Bank in the year 2008. Account was taken over by Dena Bank – respondent in 2013 with fresh agreement being entered into between the parties. Petitioner was granted credit facility in the shape of CC limit for a sum of Rs. 40 lakhs as working capital and later a fresh term

loan of Rs.19.30 lakhs was also taken. Petitioner's account was admittedly declared Non Performing Asset (NPA) in 2016. Huge loss was suffered by the petitioner allegedly due to act of the respondent in not handing back petitioner's machines for which civil suit was filed by him. Recovery proceedings were initiated by respondent by way of OA-4317-2017. Despite a lawyer having been engaged by petitioner, he was proceeded exparte on 07.12.2019. Application dated 08.05.2022 was filed for setting aside order dated 07.12.2019 to the extent petitioner was proceeded exparte, however, due to an inadvertent mistake presence of petitioner's counsel was not marked on 18.07.2022 due to which her MA-9-2022 was dismissed on 18.07.2022. Application seeking restoration of MA-9-2022 was filed, which is pending for 18.01.2024. Amount being claimed by the respondent – Bank, it is submitted, is on the higher side. Moreover, subsidy granted by the State i.e. 75% of the loan amount deposited with the respondent – Bank has not been credited towards the loan account.

3. Learned counsel for petitioner submits that petitioner is ready and willing to pay reasonable amount against the outstanding loan amount after adjustment of 75% of subsidy and that petitioner undertakes to deposit 10% of the amount within seven (07) days from intimation and acceptance of offer under OTS policy and remaining amount shall be deposited in six equal monthly instalments. Petitioner's representation dated 01.03.2023 was not considered and decided and at the same time, respondent – Bank threatened to take possession of the secured asset. Hence, present writ petition has been filed seeking direction to respondent – Bank to accept proposal for OTS proposal submitted by the petitioner.

4. Learned counsel for respondent – Bank while raising objection qua entertainability of present writ petition submits that as agreed upon and as recorded in order dated 06.11.2023, petitioner had come present before the official of the respondent – Bank but he did not submit any concrete proposal. This is refuted by learned counsel for the petitioner while submitting that proposal as contained in representation dated 01.03.2023 was reiterated before the bank authorities. Learned counsel for the respondent submits that proposal, as contained in representation dated 01.03.2023, is firstly not a concrete proposal and moreover the same is not acceptable to the bank. Written communication in this respect shall be conveyed to the petitioner within the next two working days.

5. Having heard learned counsel for the parties, we do not find any ground to interfere in this matter. Prayer addressed by petitioner is for a direction to respondent – Bank to accept his proposal for One Time Settlement. It is a settled position that borrower/guarantor does not have a vested right to seek One Time Settlement though it is always open to the parties to arrive at any mutually acceptable settlement. Gainful reference in this regard can be made to judgment of Hon'ble the Supreme Court in ***The Bijnor Urban Cooperative Bank Ltd. Vs. Meenal Agarwal and others, 2022 AIR (SC) 56,*** wherein it was 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. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
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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.

6. This position has been reiterated in the judgment of Hon'ble the Supreme Court in **State Bank of India Vs. Arvindra Electronics Pvt. Ltd., 2023(1) SCC 540.**

7. In the given factual matrix, we do not find any ground to issue any direction to respondent – Bank to accept a particular settlement as has been urged before us.

8. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to the petitioner to avail remedy/remedies as available to him in accordance with law.

9. It is clarified that there is no expression of opinion on the merits of the case and it is reiterated that it is always open to parties to arrive at any mutually acceptable settlement.

(LISA GILL)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

November 14, 2023
rts

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