IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

117 **CWP-17632-2023**
Date of Decision: 31.08.2023

SUMATI GUPTA

... Petitioner

VERSUS

CANARA BANK

....Respondent

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

Present: Mr. Deepak Kohli, Advocate and
Mr. Karan Sirohi, Advocate
for the petitioner.

Ms. Rahish Pahwa, Advocate
for the respondent-Bank.

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LISA GILL, J.(Oral)

1. Petitioner in this writ petition seeks a direction to the respondent-Bank to decide his representation dated 01.03.2023 (Annexure P-9) and to consider the proposal for One Time Settlement (OTS) submitted by him sympathetically. It is contended by learned counsel for the petitioner that without taking a decision on the proposal for OTS, respondent-Bank is illegally taking action after declaration of the petitioner's account as Non-Performing Asset (NPA).

2. Learned counsel for respondent-Bank to whom advance copy of the writ petition has been supplied, informs that proposal for OTS submitted by the petitioner on 02.07.2022 was rejected by the bank on 09.01.2023 and the same was duly received by the petitioner on 17.01.2023. Therefore, petitioner's averment that the bank has not

reverted either in the affirmative or negative is absolutely incorrect and that action is being taken by the respondent-Bank strictly in accordance with the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002.

3. Faced with the above, learned counsel for the petitioner submits that subsequently representation dated 01.03.2023 has been submitted by the petitioner which has not been decided.

4. Having heard learned counsel for the parties, we do not find any ground whatsoever for interference in this writ petition. It is apparent that proposal for OTS submitted by the petitioner on 02.07.2022 was rejected by the respondent-Bank on 09.01.2023 with the suggestion that there may be substantial improvement in the OTS amount proposed by the petitioner. However, the petitioner instead of improving the said proposal submitted another representation dated 01.03.2023 with the very same proposal while stating that the earlier proposal for OTS has not been considered by the respondent-Bank. In the given factual matrix, we do not find any ground which calls for interference in this writ petition. Furthermore, it is to be noted that Hon'ble the Supreme Court in the case of **The Bijnor Urban Cooperative Bank Limited, Bijnor and others Vs. Meenal Agarwal and others, 2022 AIR (SC) 56** has categorically held that there can be no positive direction to the bank to enter into a particular OTS with the borrower/guarantor. Hon'ble Supreme Court in the said matter 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.

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 facts and circumstances as above, we do not find any ground which calls for interference by us in this writ petition.

6. Writ petition is accordingly dismissed. Needless to say this order would not preclude the petitioner from approaching the respondent-Bank with a better proposal as has been suggested in

communication dated 09.01.2023. It is obviously open to the parties to enter into any mutually acceptable settlement.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

31.08.2023
Rimpal

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