

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

(104+240)

Neutral Citation No.2023:PHHC:066316 -DB

CM-14506-CWP-2022 in/and

CWP-4562-2016 (O&M)

Decided on: 08.05.2023

M/s Rana Chillers Pvt. Ltd.

....Petitioner(s)

Versus

Union of India and another

.... Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE GURBIR SINGH**

Present: Mr. Anand Chhibbar, Senior Advocate with
Mr. Mayank Mathur, Advocate for the applicant/petitioner(s).

None for respondent No.1.

Mr. Vishwajit Bedi, Advocate for respondent No.2.

G.S. Sandhawalia, J.

CM-14506-CWP-2022

After arguing for some time, counsel for the applicant/petitioner does not press the application for modification of the order dated 17.05.2018.

Accordingly, the application stands dismissed as not pressed.

CWP-4562-2016

In the present writ petition filed under Article 226/227 of the Constitution of India, the challenge has been made to the order dated 22/23.12.2015 (Annexure P-12), wherein the claim of the petitioner for being considered for the One Time Settlement (OTS) proposal was rejected. The claim was in pursuance to the OTS (Annexure P-5) and,

therefore, the prayer was made to stay the recovery of amount in pursuance to the Civil Court decree.

2. A perusal of impugned order dated 22/23.12.2015 (Annexure P-12) passed by respondent No.2-National Horticulture Board, a Society registered under the Societies Registration Act, 1860 would go on to show that the suit dated 16.01.2002 had been decreed on 29.04.2008 (Annexure P-1) in favour of the said Board, which has been filed for recovery of its dues for amount of ₹52,96,692/- alongwith interest @ 18% per annum from the date of filing till the date of realization. The appeal filed against the said judgment and decree was dismissed by the District & Sessions Judge, Patiala on 06.12.2011. The petitioners, thereafter, filed CWP No.21447 of 2011 before this Court, wherein it was directed that the execution proceedings would remain in abeyance till the decision is taken on the OTS and finalize. Letters Patent Appeal No.294 of 2015 filed by the Board was decided on 26.02.2015, which was partly allowed that the case be treated as pending suit and not a decreed case.

3. Resultantly, while re-considering the Board came to the conclusion that the company is not eligible for OTS being a willful defaulter as it had earned profit during its operation in some of financial year as per balance sheet provided. It was also held that once it was not paying any amount to the Board despite being in profit, it would not fall in the category of cases which were eligible for OTS and, therefore, it had rejected the claim for being considered under OTS Scheme.

4. Initially the petitioner had been protected vide order dated 18.03.2016 and eventually vide order dated 19.03.2018 it was directed to deposit a sum of ₹5 lakhs within a period of one week, which had been

duly complied with. It was noticed on 17.05.2018 that recoverable amount was ₹2,09,29,135/- and, therefore, the plea that offer of ₹28 lakhs should accepted was rejected and the stay was declined and directions were given that he may submit a fresh OTS proposal alongwith upfront amount of ₹20 lakhs within one month, which can be considered by the respondent-Board.

5. The stand of the respondent-Board is that the petitioner was not regular in making the installments and had failed to repay the loan and only one installment of ₹7 lakhs had been paid on 28.10.1998. Reliance was placed upon the OTS Scheme to hold out that once there is a willful default, the borrower would not be entitled for the OTS, specially when the Unit is in running condition and earning profits. Clause 1 (e) (i) & 9ii) read as under:-

“Clause 1

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

(e) (i) the scheme will not, however, cover cases of fraud, malfeasance and willful default.

(ii) The Debt Settlement Advisory Committee (DSAC) as constituted by the Managing Director would examine and recommend whether the borrower has not committed willful default and is eligible for the OTS scheme.”

6. In our considered opinion a short question would arise as to whether the petitioner is entitled for the benefit of the OTS as a matter of right, keeping in view the law laid down by the Apex Court in **The Bijnor Urban Cooperative Bank Limited, Bijnor and others Vs. Meenal Agarwal and others, 2022 (2) PLR 408**, and having failed in its defence in the civil suit whether is entitled for any interim orders frustrating the decree.

7. A perusal of the paper-book would go on to show that the suit was decreed while noticing that financial assistance had been given of ₹32,12,000/- in the year 1994 against the demand of ₹37 lakhs. The same was payable in five equal installments within 5 years. The interest element was 4% per annum as per the repayment schedule. Only one installment of ₹7 lakhs had been paid on 28.10.1998 and, thereafter, the outstanding has swollen to ₹44,13,241/- as on 30.06.2001. Resultantly, notice was served upon the petitioner. The defence of the petitioner was that he had financial difficulties as the price of potatoes had fallen down and the subsidy amount has not been released and Electricity Board had revised its rates etc. Eventually the suit was decreed for ₹52,96,692/- alongwith interest @ 18% per annum from the date of filing the suit till the date of decree on 29.04.2008. As has been noticed in the decision of the OTS the appeal was dismissed on 06.12.2011.

8. Apparently, in the writ petition filed directions as such were issued on 23.09.2014 (Annexure P-10) that before proceeding with the execution since the RSA No.1362 of 2012 was pending, the case had not become final, a decision should be taken on the OTS and the execution would remain in abeyance till then. The appeal of the Board before the Coordinate Bench was disposed of on 26.02.2015 (Annexure P-11) that the properties attached or any other properties in respect of which execution was sought should not be sold till the OTS proposal is decided and for a period of 4 weeks thereafter also the protection was continued. Apparently, thereafter the order dated 23.12.2015 (Annexure P-12) has been passed by holding out that the petitioner is a willful defaulter and had held back the payments.

9. The Apex Court in the case of **The Bijnor Urban Cooperative Bank Limited (supra)** has held that OTS cannot as such enforced as a matter of right by any person who is in default. Nothing has been put to show that the payment was paid by the petitioner over ₹7 lakhs. In such circumstances, this Court is of the opinion that the observations of the Apex Court would come into play, which read 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.”

10. Another fact would remain that by virtue of the filing the present writ petition, the petitioner initially had got a stay on the suit of

recovery which was decreed against it and the stay was vacated thereafter by this Court on 17.05.2018 and the interest element continues to run. If the petitioner has any right to file any objections, same could have been filed against the execution proceedings or for it to get a stay in the Regular Second Appeal which it has failed to do so and by virtue of filing the present writ petition could not stall the execution proceedings, which it has successfully done for a reasonable period of time till the stay was vacated on 17.05.2018 once the decision on the claim for OTS had been decided. In such circumstances, we are of the considered opinion that the extraordinary writ jurisdiction is not liable to be exercised in the facts and circumstances, since the Board has come to the conclusion that the petitioner was a willful defaulter and as per terms of the OTS could reject the case and the fact remains that the suit was decreed against it, which was subject matter of challenge in a independent litigation.

11. Resultantly, there is no merit in the present writ petition and same is dismissed.

(G.S. SANDHAWALIA)
JUDGE

08.05.2023
Naveen

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned :	✓Yes	No
Whether Reportable :	✓ Yes	No