IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(118+210) **CM-8324-CWP-2023 in/and CWP-29618-2022**
Decided on :18.05.2023

Umed Singh & another ……Petitioner(s)

Versus

State Bank of India ……Respondent(s)

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

Present: Mr.Rajesh Hooda, Advocate for the applicant-petitioner (s).

Mr.Rakesh Gupta, Advocate, for the respondent-Bank.

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<u>G.S. Sandhawalia, J. (Oral)</u>

1. Challenge in the present writ petition, filed under Article 226/227 of the Constitution of India is to the auction notice dated 15.11.2022 (Annexure P-3) wherein on account of the outstanding of Rs.27,79,622/- due as on 22.12.2022, the property was put to auction for a reserve price of Rs.38 lakhs.

2. Vide order dated 21.12.2022, while issuing notice of motion, the petitioners' interim prayer for making fresh representation for the OTS by depositing Rs.6.5 lakhs upfront amount was permitted, subject to the condition that the sale certificate would not be issued to the successful bidder regarding the sale of the secured assets, scheduled to take place on 22.12.2022. The conditional order was put that in default of compliance of the said order, the order would stand vacated and in case of the deposit, the respondent-Bank would consider the OTS according to the policy followed by it.

3. In view of the earlier order dated 27.12.2022, the bank has rejected the OTS for Rs.20 lakhs against the loan amount of Rs.24 lakhs (Annexure A-2). Resultantly, application <u>CM-8324-CWP-2023</u> has been filed for issuance of appropriate direction to the respondent for consideration of the OTS.

4. Counsel for the applicant-petitioners submits that they have deposited Rs.6.5 lakhs in no lien account.

5. As per the reply filed, the petitioners are now liable to pay Rs.27,79,622/- as on 22.10.2021. Counsel for the respondent-Bank submits that Rs.34.69 is the outstanding as on today. It has further been mentioned that the petitioner has a right to challenge the proceedings under Section 13(4) of the Securitization and Re-construction of Financial Assets and Enforcement of Security Interest Act, 2002 before the Tribunal.

6. Counsel for the petitioners submits that he has no instructions regarding the settlement at Rs.20 lakhs as the OTS though counsel for the Bank is open to the said suggestion, therefore, the Bank cannot be compelled to enter into a OTS as per the choice.

7. Accordingly, no further indulgence can be granted to the petitioners in view of the principles of law settled by the Apex Court in **The Bijnor Urban Cooperative Bank Ltd., Bijnor & others Vs. Meenal Agarwal & others, 2022 (2) PLR 408**. Relevant portion of the judgment 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.
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> 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."

8. Accordingly, in view of the above discussion, the present writ petition stands dismissed. The petitioners are relegated to avail their alternative remedy before the Tribunal, in accordance with law, if they so wish. However, the Bank would refund Rs.6.5 lakhs to the petitioners which

was deposited in no lien account, in view of the law laid down by the Apex Court in **M/s Kut Energy Pvt. Ltd. & others Vs. Authorized Officer, Punjab National Bank, Large Corporate Branch, Ludhiana & others, 2020 (19) SCC 533** since the amount was only deposited to show the bona fides of the petitioners and it was an order passed by this Court. Therefore, the legal right of the petitioners to claim the refund of the said amount would always arise. Needful be done within a period of 2 weeks.

(G.S. SANDHAWALIA)
JUDGE

(GURBIR SINGH)
18.05.2023 **JUDGE**
sailesh

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