IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.85 OF 2024
IN
INTERIM APPLICATION (L) NO.11371 OF 2024
IN
SUIT (L) NO.11235 OF 2024

Hotel Horizon Pvt. Ltd. and ors.	: Appellants/ Original Plaintiffs.
Vs.	
Union Bank of India and ors.	: Respondents/ Original Defendants.

WITH
INTERIM APPLICATION NO.1328 OF 2024
IN
APPEAL NO.85 OF 2024

Hotel Horizon Pvt. Ltd. and ors.	: Applicants/ Appellants.

In the matter

Hotel Horizon Pvt. Ltd. and ors.	: Appellants/ Original Plaintiffs.
Vs.	
Union Bank of India and ors.	: Respondents/ Original Defendants.

Mr. Cyrus Ardheshir a/w Mr. Munaf Virjee and Mr. Akash Agarwal i/by AMAR Law for the Appellants/Applicants.
Mr. Charles De Souza & Roshan Gaud a/w Rupak Sawangikar i/by Orbit Law Services for the Respondents.

CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.
DATE : 30th APRIL, 2024

P.C. :

1. The present Appeal impugns an order dated 12th April 2024 by which Learned Single Judge has dismissed the Interim Application [being Interim Application (L) No.11371 of 2024] filed by the Appellant in which the Appellant had sought the following reliefs, viz.

> *"a) That pending the hearing and final disposal of the Suit, the Defendants by themselves, their servants and agents be restrained by an order and injunction of this Hon'ble Court from in any manner dealing with, disposing of, alienating, encumbering, selling, creating third party interest, or entering into any other arrangement in respect of the loan account of the Applicants or any of the asset of the Applicants in any manner whatsoever pending the hearing and disposal of this Suit;*
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> *b) That pending the hearing and final disposal of the Suit, the Defendants by themselves, their servants and agents be restrained by an order and injunction of this Hon'ble Court from in any manner from conducting the purported auction scheduled on 3.4.204;*

c) That pending the hearing and final disposal of the Suit, the Defendants by themselves, their servants and agents be restrained by order and injunction of this Hon'ble Court from taking any steps and from doing acts, deeds and things so as to in any way affect the rights of the Applicants in respect of the said loan account including assets thereof and/or under the said Agreement inter-alia, doing any act so as to affect the continuance and validity of the said Agreement and/or which may be contrary to the understanding arrived at between the Applicants and Defendants under the said Agreement;"

2. The Appellants, are the Applicants in the captioned Suit in which Appellants have *inter-alia* sought specific performance of an Oral Agreement stated to have been arrived at on 18th January 2024 between the Appellants and the Respondents by which according to the Plaintiffs the Respondents had agreed to a One Time Settlement (OTS) in the following terms, viz.

"(a) That the account of the Defendant and all claims of the bank against the company and guarantors stands settled by for One-Time Settlement (hereinafter to referred to as "OTS") for a sum of

Rs.200,00,00,000/- (Rupees Two Hundred Crores only)

(b) *That the said sum of Rs.200,00,00,000/- (Rupees Two Hundred Crores only) shall be paid by the Plaintiff to the Defendant within a period of 90 days from the date of issuance of the firm letter sanctioning OTS proposal of the Borrower.*

(c) *That the parties shall withdraw their respective cases filed against one another.*

(d) *That the Defendant shall issue a Letter of Acceptance to the Plaintiff to enable the Plaintiff to get the amount paid through its Investor, one M/s. Kotak Alternate Asset Manager Ltd. (being a AAA rated financial institution).*

(e) *That the Defendant will, upon receipt of the payment, release all securities, guarantees, pledged shares, movables, hypothecated assets, receivables and all other entitlements in favor of the Plaintiff. The defendant shall, upon receipt of the OTS amount, issue no dues certificate to the company/guarantors and shall cancel indenture of mortgages/pledges/personal guarantees etc.*

(f) *That the Defendant shall return Cheques/ instruments etc. if any lying with them to the Plaintiff.*

(g) *That till the said period of 90 days, the Defendant shall keep its actions for recovery in abeyance.*

*The aforesaid terms are collectively referred to as "**The Agreement**".*

3. Simply put, it is the case of the Appellants that on 18th January, 2024 the Respondents had agreed to an OTS of the Appellants dues on the aforesaid terms. Mr. Ardheshir, Learned Counsel appearing on behalf of the Appellants, invited our attention to letters dated 28th December 2023 and 5th January 2024 addressed by the Appellants to the Deputy General Manager of Respondent No.1 in which the Appellants had sent their proposal for a OTS. He submitted that the same culminated into an agreement when the aforesaid terms were accepted on 18th January, 2024 as more particularly set out from paragraph 4(a) to 4(g) of the Plaint. He then submitted that a settlement had been arrived at in the aforesaid terms was evidenced by the fact that on 19th January, 2024 the Respondent No. 1 had infact withdrawn a proceeding filed against the Appellants in the National Company Law Tribunal, Mumbai on the basis that the matter had been amicably settled between the Parties.

4. Mr. Ardheshir then submitted that the Respondent had on 29th February, 2024 addressed a letter with the OTS proposal which was different in terms to what had been agreed upon by the Parties on 18th January 2024. The principle difference he pointed out was that vide the said letter the Appellants were required to make a payment of 20 crores within 15 days of the issuance of the said letter which was contrary to what was agreed upon by the Parties on 18th January, 2024. He submitted that the Appellants had an investor in place who was ready and willing to make payment of the entire sum of Rs. 200 crores upon the sanction of OTS.

5. Mr. Ardheshir then pointed out that since the Respondents had reneged on the agreement arrived at on 18th January, 2024 and it was thus that the Appellants were constrained to file the present Suit. Mr. Ardheshir submitted that the Appellants were and continued to be ready and willing to adhere to the terms of OTS arrived at between the Parties on 18th January, 2024.

6. Basis the above, Mr. Ardheshir submitted that the Learned Single Judge had erred in passing the Impugned Order. He submitted that if the property of the Appellants was auctioned by the Respondents, the Suit itself would become infructuous and thus, the present Appeal was required to be allowed and interim reliefs as prayed for, be granted.

7. *Per contra,* Mr. De Souza, Learned Counsel appearing on behalf of the Respondents, submitted that Appellants entire case that an OTS had been arrived at on 18th January, 2024 was entirely false and misconceived.

8. He submitted that the OTS proposal was sent to the Appellants vide the Respondents letter dated 29th February, 2024 and since the Appellants did not accept the same in the time prescribed the Respondents had vide their letter dated 16th March 2024 informed the Appellants as follows, viz.

> *"This has reference to your email dated 14.03.2024, we wish to inform you that Bank has sanctioned yourselves One Time Settlement (OTS) of Rs. 200.00*

crores against a principal outstanding of principal outstanding of Rs. 213.00 crores and an interest of Rs. 131.95 crores.

As per the sanction letter no. SAMB/OR/1093 2023-24 dated 29.02.2024 conveyed to yourselves on 29.02.2024, an amount of Rs.20.00 crores were required to be deposited within 15 days from the date issuance of the sanction letter. The sanction letter was received by yourselves on 29.02.2024

We regret to inform you that despite a lapse of the above period, you have failed to deposit the upfront amount of Rs. 20.00 crores with the Bank as per sanction terms.

In view of the above, the OTS sanctioned in your favour by the Bank stands cancelled. Further, Bank reserves the right to recover its dues through available legal procedures."

Mr. De Souza then invited our attention to the Appellants letter dated 14th March 2024 and pointed out that after receipt of the Respondents letter of 29th February, 2024 the Appellants had, for the first time written to the Respondents stating viz.

"You will kindly appreciate that the company has been working tirelessly to resolve its account with

the Bank along with the Investor. As requested by the Bank, the term-sheet executed between the Company and Investor has also been provided to the bank vide letter of the company dated 26.02.2024. The Bank has also expressed satisfaction in the financial ability of the Investor who is well renowned Financial Institution of repute. The Discussions with other ARCs is at very advanced stage with their senior management. In view of their increased demands post the OTS with UBI, the investor along with company has also provided them a settlement structure which meets their financial objectives. During the joint interactions with investor and company, the ARCs have conveyed that the said structure seems to be in principle acceptable to them and have assured to conclude the same at the earliest. We are also pleased to inform you that the other major CPs as stipulated by the Investor for disbursement have already been complied with by the Company during this period. The Company has the requisite funding arrangement in place to enable it to pay its OTS amount to the Bank.

Therefore, in view of the above and in the interest of all stakeholders we request your goodselves to kindly align the terms and conditions of the OTS letter issued by Bank on 29.02.2024 to the terms as proposed by the Company vide its letters/ email dated 28.12.2023, 02.01.2024 & 05.01.2024."

From the above he pointed out that had there been any settlement arrived at between the Parties on 18th January 2024, the same would have been specifically referred to in the said letter. He submitted that this had admittedly never been done by the Appellants. He then submitted that the Respondents had made an application before the NCLT to correct the statement of the Respondents Counsel as recorded in the Order of the NCLT dated 19th January, 2024.

9. Mr. De Souza then submitted that since the Appellant were defaulters in terms of certain credit facilities granted to them, Respondent No. 1 was compelled to initiate proceedings under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the SARFAESI Act"). He submitted that the Appellants had a remedy under the SARFAESI Act and the present Suit was thus itself not maintainable. He pointed out that the Appellants had approached the Debts Recovery Tribunal ("the DRT") seeking *inter alia* a stay of the auction .

10. Mr. De Souza pointed out that the present Suit was filed only on 1st April 2024 and was nothing more than an attempt to scuttle the recovery proceedings instituted by the Respondents against the Appellants under the provisions of SARFAESI Act and nothing more. He invited our attention to the Impugned Order and pointed out there from the Learned Judge had after considering the rival contentions, came to the *prima facie* conclusion that the parties were not *ad idem* and thus there was no concluded contract.

11. We have heard Learned Counsel and after considering rival contentions find absolutely no infirmity in the Impugned Order. From what has been shown to us, it is clear that the Appellants' own understanding was not that any contract had been arrived at on 18th January, 2024, the same would have found a mention in the Appellants' letter dated 14th March, 2024 but the same however does not. Also, we must note that reliance placed by the Learned Counsel for the Appellants on the

fact that the order of the NCLT dated 19th January, 2024 is also, in our view, plainly untenable for two reasons, one, that the same is silent on what the terms of this so called settlement were and second, the Appellants' own letter dated 14th March, 2024, which we have already referred to and was admittedly addressed well after 18th January, 2024 makes absolutely no mention of any settlement arrived at on 18th January, 2024.

12. Thus for the aforesaid reasons we are in complete agreement with the following findings of the Learned Single Judge viz.

> *"For coming into force of a valid contract, it is necessary that the parties should agree as to the terms and they must be ad idem on the terms of settlement, but what is noted by me is, the offer of OTS of the Plaintiff was hedged with a condition of making the payment within 90 days from receipt of the firm sanction from the bank. But this condition of making the payment is not accepted by the Bank and on the contrary, it accepted the proposal of OTS, provided payment is made within a period of 30 days of the issuance of communication by it i.e. 29.02.2024.*

Since no consensus could be arrived between the parties, no concluded contract come into existence and I do not deem it appropriate that the Defendant Bank should be restrained from prosecuting its remedies before the DRT, which include the remedy of auction, which it has already resorted to.

It is also informed by Mr. Dsouza that the Bank is now armed with an order under Section 14 of the SARFAESI Act and is ready with a mechanism to follow."

13. We are of the view that the conduct of the Appellants is entirely lacking in bonafides. We say so because Respondent No.1 on 29th February 2024 sent the Appellants the OTS proposal. The Appellants thereafter addressed a letter for the first time only on 14th March 2024, in which no mention whatsoever was made of any settlement/agreement having been arrived at on 18th January 2024. The Respondents thereafter withdrew/cancelled the OTS offer on 16th March 2024 and the suit was filed only on 1st April 2024. To our mind, this conduct is telling and by itself would dis-entitle the Appellants from any interim/ad-interim reliefs. Having found the conduct of the

Appellants wanting in bonafides, costs must follow. Hence, we pass the following order, viz.

:ORDER:

i. Appeal dismissed with cost of Rs. 1,00,000/- (Rupees One Lakh only).

ii. Interim Application is also dismissed.

iii. Cost to be paid to Armed Forces Battle Casualties Welfare Fund within eight weeks from today, failing which the same to be recovered as arrears of land revenue. The bank account details of Armed Forces Battle Casualties Welfare Fund are as follows :-

Armed Forces Battle Casualties Welfare Fund

Bank Name	Canara Bank
Branch	South Block, Defense, Head-Quarter New Delhi – 110 011
IFSC Code	CNRB0019055
Account Number	90552010165915
Type of Account	Saving

14. Before parting, we make it clear that the observations made in the present order are only for the purpose of deciding the present Appeal and nothing else.

(ARIF S. DOCTOR, J.) **(CHIEF JUSTICE)**