2024:PHHC:000612-DB

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

CWP-5336-2021 (O&M)
Date of Decision: January 05, 2024

MEENU GUPTA ..... Petitioner

Versus

STATE BANK OF INDIA AND OTHERS ..... Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present: Ms. Palak Dev, Advocate for the petitioner.

Mr. Gaurav Goel, Advocate for respondent – Bank (through VC).

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LISA GILL, J.

1. This writ petition has been filed seeking direction to respondent – Bank to comply with terms and conditions of One Time Settlement (OTS) statedly sanctioned in favour of guarantor vide communication dated 01.12.2020 (Annexure P7).

2. Learned counsel for petitioner submits that loan facility was taken by respondent No. 3 for a sum of Rs.1.5 crores. Equitable mortgage of three properties was created, out of which one belonged to petitioner and two to one Ashok Kumar and Tajinder Singh. Due to financial indiscipline on the part of borrower, account was declared Non Performing Asset (NPA). Proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') were initiated and notice(s) under Sections 13(2) and 13(4) of SARFAESI Act were issued on 11.06.2018 and 02.11.2018. Learned counsel for petitioner submits that OTS in respect to account was sanctioned on

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01.12.2020 with the help of respondent No. 6, who was an employee of respondent – bank, however, the Bank was not coming forward for compliance of terms and conditions of said settlement. It is, thus, submitted that respondent – Bank should be directed to comply with terms and conditions of said OTS and accept the amount, which petitioner was always ready and willing to deposit.

3. This writ petition has been opposed by learned counsel for respondent - Bank while submitting that there was huge outstanding of Rs.2.59 crores as on 31.08.2021. Apart from raising objection regarding entertainability of this writ petition, it is submitted that document dated 01.12.2020 purportedly the sanction for OTS is a forged and fabricated one, never issued by respondent – bank. Reference is made to communication dated 16.04.2021 from Deputy General Manager & CCO, SBI wherein it is specifically stated that communication dated 01.12.2020 has never been issued by the said office and there was no such committee by name of Circle Credit Committee at LHO, Chandigarh as on the date of purported resolution.

4. Heard, learned counsel for the parties.

5. Learned counsel for petitioner is unable to deny that petitioner first and foremost has an efficacious remedy for redressal of grievance(s) as raised in this writ petition qua proceedings under SARFAESI Act initiated against the petitioner. It has been held by Hon'ble the Supreme Court in various judgments that there should be no interference by this Court in exercise of jurisdiction under Article 226 of Constitution of India in such like matters except in exceptional or extraordinary circumstances, reference in this regard can be made to judgments of Hon'ble the Supreme Court in **Union Bank of India v. Satyawati Tandon and others, 2010(8) SCC 110;**

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Varimadugu Obi Reddy v. B. Sreenivasulu and others, 2023(1) R.C.R.(Civil) 34 and **M/s South Indian bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771.** Moreover, no guarantor/borrower has a vested right for seeking One Time Settlement. It is has been held by Hon'ble the Supreme Court in judgment of **The Bijnor Urban Cooperative Bank Limited, Bijnor and others vs. Meenal Aggarwal and others, 2022 AIR (SC) 56** 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. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
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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. Moreover, in the present case, purported sanction letter dated 01.12.2020 is denied to have been issued by respondent – bank. Disputed questions of fact arise in this writ petition which cannot be subject to adjudication in present proceedings.

7. In view of facts and circumstances of the case, we find no ground whatsoever to interfere in this writ petition.

8. At this stage, learned counsel for petitioner submits that liberty should be afforded to petitioner to avail remedy(ies) available to her in accordance with law for challenging proceedings under SARFAESI Act and also take action in accordance with law qua purported misdeeds of respondent No. 6 as it later came to light that there were certain inquiries pending against respondent No. 6.

9. Keeping in view facts and circumstances as above, writ petition is dismissed with liberty as aforementioned.

10. Pending application(s), if any, stand(s) disposed of.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

January 05, 2024
rts

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No