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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-16905-2021
Date of Decision: 23.05.2024

Rocky Sharma

..... Petitioner

Versus

Dewan Housing Finance Corporation Limited and another

..... Respondents

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

Present: Mr. Bhupinder Gupta, Advocate for the petitioner.

Ms. Harmanjeet Kaur, Advocate for Mr. Harsh Chopra, Advocate for respondent No. 1.

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<u>LISA GILL, J.(oral)</u>

1. Prayer in this writ petition is for directing respondent No. 2 i.e. Dewan Housing Finance Corporation Limited to consider proposal for settlement submitted by the petitioner and to provide benefit of various circular/guidelines issued by Reserve Bank of India and not to impose any penal interest/ late charges on the outstanding amount.

2. It is submitted that petitioner availed of financial facility (Housing Loan) for a sum of Rs. 25,34,105/- from Deutsche Postbank which was subsequently taken over by respondent No. 1-Dewan Housing Finance Corporation Limited. In the month of June 2010, petitioner deposited a sum of Rs. 7,90,000/- against loan account and remaining balance was to be deposited by way of 174 equal monthly installments of Rs. 18,130/-. Requisite deposit was made by petitioner till March, 2020.

Although, there was financial indiscipline for reasons as may be due to which respondent No. 1 was requested for adjustments. On inquiries, petitioner came to know that respondent No. 1 was charging interest at a rate higher than agreed amount. Reference is made to a schedule annexed as Annexure P-2 with the writ petition. Genuine request of petitioner, it is asserted was not being considered and legal notice dated 20.02.2021 was issued to petitioner calling upon him to deposit a sum of Rs. 17,29,467/-.

Learned counsel for petitioner further submits that irrational and illegal rate of interest is being charged alongwith some penal interest which is not justified or permissible in any manner. Petitioner had submitted proposal for One Time Settlement (OTS) for a sum of Rs. 8,18,011/- which should be accepted. CWP No. 9562 of 2021 filed by petitioner was dismissed as withdrawn on 07.05.2021 in order to file reply to legal notice. Petitioner thereafter filed representation dated 17.05.2021 and reply to legal notice dated 18.05.2021. However, no action was taken by respondent No. 2, therefore, present writ petition was filed.

3. Learned counsel for respondent No. 1 has opposed this writ petition while submitting that present writ petition is not entertainable qua a private non-banking Housing Finance company. Moreover, petitioner is default of the dues towards the respondent No. 1. It had been offered by the respondent No.1 that in case petitioner deposits a sum of Rs. 11,02,120/- i.e. overdue amount along with an undertaking that he would continue to deposit the future installments as they fall due, his account can be regularized and in the alternate if total outstanding of Rs. 28,00,000/-

(approximately) is deposited, the account can be settled and closed. However, petitioner has not come forward to discharge his liability. She seeks dismissal of the writ petition.

4. Learned counsel for petitioner on instructions submitted that said amount is not justified or permissible and petitioner would not be able to deposit the same.

5. Heard learned counsel for the parties.

6. In the given factual matrix, we do not find any ground whatsoever to interfere in this writ petition in exercise of jurisdiction under Article 226 of the Constitution of India. It is settled position that there cannot be a positive mandate to a bank/financial institution for sanctioning a particular OTS in favour of borrower or guarantor. Hon'ble the Supreme Court in the case of **'<u>The Bijnor Urban Cooperative Bank Limited, Bijnor and others vs. Meenal Agarwal and others</u>', 2021 SCC Online SC 1040** has 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.

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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."

7. We do not find necessity to delve upon the controversy regarding rate of interest etc. as such being raised before us by learned counsel for petitioner in the given circumstances. It is further to be noticed that relief claimed in this writ petition is qua a private non-banking housing finance company, therefore, present writ petition in any case is not entertainable. Gainful reference in this respect can be made to judgment of the Hon'ble Supreme Court in **Phoenix ARC Private Ltd. Vs. Vishwa Bharati Vidya Mandir and others,** ***2022 AIR (SC) 1045*** **,** wherein it has been held as under:-

> "12. Even otherwise, it is required to be noted that a writ petition against the private financial institution - ARC - appellant herein under Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the SARFAESI Act can be said to be not maintainable. In the present case, the ARC proposed to take action/actions under the SARFAESI Act to recover the borrowed amount as a secured creditor. The ARC as such cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities.

If proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the SARFAESI Act and no writ petition would lie and/or is maintainable and/or entertainable. Therefore, decisions of this Court in the cases of ***Praga Tools Corporation v. Shri C.A. Imanual and others, (1969) 1 SCC 585*** and ***Ramesh Ahluwalia vs. State of Punjab, (2012) 12 SCC 331*** relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers."

8. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to petitioner to avail remedy(ies) available to him in accordance with law for redressal of his grievance(s) as raised in this writ petition besides impugn recovery proceedings, if any initiated against him. Parties are always at liberty to arrive at any mutually acceptable settlement.

9. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

23.05.2024
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No