IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

2024:PHHC:068549-DB

(223) **CWP-26931-2021**
Date of Decision: 16.05.2024

Sunil Kumar Garg --Petitioner

Versus

State Bank of India & another --Respondents

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

Present:- Mr. D.S. Bhinder, Advocate for petitioner.

Mr. Rajnish K. Jindal, Advocate for respondent-Bank (through V.C).

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LISA GILL.J (Oral)

Prayer in this petition is for directing the respondent-Bank to consider the proposal for settlement submitted by petitioner on 08.11.2021 (Annexure P-3).

2. It is a settled position of law that borrower/guarantor does not have vested right to seek One Time Settlement (O.T.S.). Hon'ble the Supreme Court in the case of **Bijnor Urban Cooperative Bank Ltd. Vs. Meenal Agarwal and others, 2022 AIR (SC) 56** has held as under:-

> *"11. .... 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*

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> *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."*

3. Petitioner's proposal/representation in the instant case was rejected by the respondent-Bank vide communication dated 16.11.2021, whereby petitioner's account had been declared fraud by the competent authority. Thus respondent-Bank did not settle petitioner's account under O.T.S because of declaration of account fraud and FIR being registered against the petitioner.

4. Learned counsel for petitioner argued that in terms of the applicable policy petitioner is entitled for consideration of its proposal for O.T.S in respect to the loan account in question. However in the given factual matrix, we do not find any merit in this argument. At this stage, learned counsel for petitioner submits that declaration of loan account itself is illegal and arbitrary and that proceedings were undertaken when petitioner was in custody.

5. Be that as it may, petitioner has appropriate remedy/(ies) available to him in accordance with law, which he is free to avail. No ground is made out to continue present proceedings wherein sole prayer is for direction to respondents to consider the proposal for O.T.S submitted by petitioner on 08.11.2021. Present writ petition is, accordingly, dismissed. Petitioner is at liberty to avail statutory remedy/(ies) available to him in

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accordance with law to challenge proceedings under the SARFAESI Act. Parties are always at liberty to arrive at any mutually acceptable settlement.

(LISA GILL)
JUDGE

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(AMARJOT BHATTI)
JUDGE

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

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