IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 19489 OF 2024

Yogesh Vasant Wani … Petitioner

Versus

The State Government of Maharashtra & Ors. ... Respondents

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Mr. Vivek Patil a/w. Mr. Sandesh Shukla, Mr. Anasamah Sayed, Ms. Sayli Patil, Mr. Devesh Sawant, Mr. Amol Thorat and Mr. Afsar Ansari i/b Vivek Patil & Associates for the Petitioner.

Mr. Prasad S. Dani, Senior Advocate a/w. Mr. Arvind Dhanraj Aswani for Respondent Nos.3 to 5.

CORAM : M. S. KARNIK AND N. R. BORKAR, JJ.

DATED : 04th AUGUST, 2025.

ORAL ORDER (PER M. S. KARNIK, J.)

1. Heard learned counsel for the petitioner and learned Senior Advocate for the respondent Nos.3 to 5-Bank.

2. This petition prays for following substantive reliefs: -

"(a) That this Court be please to issue a writ of Mandamus, order or direction against Respondent No.3 thereby directed to them to follow the due process of law as laid down by the Respondent Nos.1 and 2 under the OTS Scheme introduced time to time by the Respondent Nos. 1 and 2 vide its circulars dated 15.11.2017, 26.02.2018, 19.10.2018, 17.07.2019, 12.06.2020, 13.08.2021, 06.06.2022, 09.02.2023, 27.04.2023, 23.01.2024 and 04.07.2024;

(f) That this Court be pleased to call for the records and proceedings of the Respondent No.3-bank in relation to the procedure followed by Respondent No.3 for alleged declaration of petitioners as Willful Defaulter and after examining the legality and validity of the same be pleased to quash and set aside the said entire action of Respondent No.3 bank for declaring the account of the petitioners as Willful Defaulter;"

3. It is submission of learned counsel for the petitioner that the petitioner is willing to settle the loan account subject to the respondent-bank granting benefit of the One Time Settlement (OTS Scheme). It is submitted that though the benefit is extended to other defaulters, the same has not been extended to the petitioner. Learned counsel submits that the petitioner has never been declared willful defaulter, therefore, no action can be taken against the petitioner for the recovery of outstanding amount. In any case, he should be given the benefit of OTS Scheme by considering the application made by the petitioner in its proper perspective. In support of his submission, learned counsel for the petitioner relied upon a decision of the Hon'ble Supreme Court in **State Bank of India Vs. Jah Developers Pvt Ltd. & Ors.** (2019) 6 SCC 787. Relying on para 24 it is submitted that even in the present case the petitioner is entitled to benefit of OTS Scheme.

4. The brief facts are that the petitioner has availed loan facilities to the tune of Rs.95 Lakhs in the year 2014. From time to time a sum of Rs.70 Lakhs was paid. According to the bank, total outstanding due as on date is Rs.2,93,89,077/-. One of the reasons assigned by the bank in the communication dated 25.07.2025 while rejecting the OTS proposal is regarding the assessment of the petitioner's financial standing. Para 3 of

the communication reads thus:-

> "3. Assessment of Your Financial Standing: Without prejudice to the foregoing, and based on the information available with the Bank, it is observed that you are a person of substantial means and financial capacity. You are known to be the owner of the following immovable properties, which cumulatively exceed a conservative valuation of ₹50 Crores:
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> - Punawale, Tal-Mulshi, Dist-Pune: S. No.40/1, Area 00H.10R-approx.₹20 Crores.
> - Hinjewadi, Tal-Mulshi, Dist-Pune: S. No. 186/1, Area 00H.70.10R-approx. ₹15-20 Crores.
> - Thergaon, Tal-Mulshi, Dist-Pune: S. No. 14/10/1/15, Area 00H.04R, with a four storeyed residential-cum-commercial building-approx. ₹6 Cores.
> - Maan, Tal-Mulshi, Dist-Pune: S. No. 378/2, Area 00H.56R – approx. ₹15-20 Crores.
> - Flat No. 03, Shreeyash Apartments, Pimpri, Pune – 464 Sq. Ft. - approx. ₹1 Crore.
>
> Additionally, we are reliably informed that you possess other immovable assets in various parts of Pune district, the particulars of which may not be within the current knowledge of the Bank.
>
> Your financial strength is evident, and your persistent default in repayment of the loan despite such wealth indicates deliberate and wilful non-compliance. Entering into a settlement with a financially solvent borrower such as yourself would amount to unjust enrichment and a betrayal of the fiduciary duty the Bank owes to its depositors and stakeholders."

5. While responding to para 3 of the communication dated 25.07.2025 reproduced above, rejecting the OTS proposal, learned counsel for the

petitioner submitted that all these properties are mortgaged to different banks/financial institutions and in respect of the loan which has been taken by the petitioner, the instalments are being paid regularly. It is, therefore, submitted that possession of properties which are mortgaged with other banks cannot be a factor to deprive the petitioner from the benefit of the OTS Scheme.

6. It is pertinent to note that this Court by an order dated 02.01.2025 made the following observations at the interim stage :-

> “1] The petitioner has approached this Court pursuant to the notice dated 12/12/2024 issued by the Nayab Tahsildar proposing to take over possession of the secured asset today. The writ petition was moved during vacation on 31/12/2024. However, no orders were passed on that day. It is submitted by the learned counsel for the petitioner that in terms of various Circulars issued by the Department of Co-operation, Marketing and Textiles, the petitioner is entitled to benefit under the One Time Settlement Scheme. Despite pursuing respondent no.4 Co-operative Bank in the matter, the benefit under the Circulars has not been granted.
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> 2] Prima facie, notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was issued on 19/02/2019 followed by an order under Section 14 of the said Act dated 09/02/2024. Taking into consideration the notice issued by the Co-operative Bank on 27/12/2024 indicating the amount of arrears recoverable from the petitioner, without prejudice to the rights and contentions of either parties, subject to deposit of an amount of Rs 60 lakhs by the petitioner with the respondent no.4 – Bank within a period of two weeks from today, no further steps to execute the notice dated

> 12/12/2024 shall be taken till the end of period of two weeks, in case the said notice has not been executed till 3.00 P.M. today. In case such amount is not deposited, the interim protection shall stand vacated automatically. It is clarified that the writ petition is being entertained only to grant some breathing time to the petitioner to avail the statutory remedy available in law."

7. It is an admitted fact that the amount of Rs.60 Lakhs which this Court has directed the petitioner to deposit with the respondent No.4 has not been deposited within two weeks from the date of the order, nor any extension sought. It is submitted that Rs.15 Lakhs was sought to be deposited which was not accepted by the bank. Factually the order dated 02.01.2025 has not been complied with by the petitioner.

8. It further needs to be noted that pursuant to the proceedings initiated for recovery by the bank under the Maharashtra Co-operative Societies Act, Section 101 Certificate has been issued against the petitioner. There is no challenge to Section 101 Certificate for recovery of the outstanding amount.

9. Learned counsel for the petitioner has also invited our attention to the interim order passed by the Co-operative Court in respect of a dispute where the petitioner had approached the Co-operative Court at Pune. An application was filed for temporary injunction against the respondent-bank restraining them from recovering of any amount contrary to the OTS norms. The Co-operative Court taking into consideration that the recovery certificate dated 12.04.2014 was issued under Section 101 (1) of the

Maharashtra Co-operative Societies Act, 1960 has not been challenged by the petitioner, while rejecting the application in para 30 held thus:-

> "30. In view of above discussion, it is prima facie held that, the Co-operative Court has no jurisdiction to grant injunction to the recovery proceeding initiated on recovery certificate issued under Sec. 101 of the M.C.S. Act, 1960 and also co-operative court has no jurisdiction to grant injunction against the actions and orders passed under the provisions of SARFAESI Act, and if, the co-operative court under Sect. 91 has no jurisdiction then, co-operative court cannot pass interim order under Sect. 95 of the M.C.S. Act, 1960 on the subject which is not covered under Sec. 91 of the M.C.S. Act, 1960."

10. Learned counsel for the petitioner laid much emphasis on the fact that this Court by the order dated 19.06.2025 in this petition has recorded willingness of the petitioner to make an application for OTS to the respondent-bank and this Court had expected the parties to resolve the dispute. The respondent-bank for the aforestated reason in para 4 of this order has declined to grant the benefit of OTS benefits. We must remind ourselves that the Hon'ble Supreme Court in **Bijnor Urban Cooperative Bank Ltd., Bijnor & Ors. Vs. Meenal Agarwal & Ors.** (2023) 2 SCC 805 in para 14 has held thus:

> "14. 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."

11. In the light of the aforesaid observations, we do not find this a fit case to exercise the jurisdiction under Article 226 of the Constitution of India as even the interim order that was passed by this Court has not been complied with by the petitioner. The petitioner, in any case, if he wishes to challenge the steps taken by the respondent-bank for recovery of possession pursuant to the issuance of an order under Section 14 of the SARFAESI Act, has to resort the remedies provided under the SARFAESI Act. It is, therefore, not possible for us to entertain the present petition in the facts and circumstances of the case.

12. The decision of the Hon'ble Supreme Court relied upon by the petitioner in **State Bank of India Vs. Jah Developers Pvt Ltd** (supra) is not applicable in the present case as the petitioner is already facing a recovery certificate under Section 101 of the Maharashtra Co-operative

Societies Act which has not been challenged and as even the dispute filed by the petitioner before the Co-operative Court against the recovery proceedings wherein injunction application made by the petitioner has been rejected. Consequently, we do not find any merits in the petition. The petition is dismissed. No costs.

13. Liberty to avail appropriate remedy under the SARFAESI Act is kept open. All contentions are kept open.

14. A request is made by the learned counsel for the petitioner for staying this order. The request is rejected.

(N. R. BORKAR, J.) **(M. S. KARNIK, J.)**