(2012) 07 KL CK 0206

In the High Court Of Kerala

Case No : WP (C) . No. 7505 of 2012 (K)

Fathima APPELLANT

Vs

Union Bank of India RESPONDENT

Date of Decision : 23-07-2012

Acts Referred:

Citation : (2012) 07 KL CK 0206

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : K.C. Eldho, Sri. Jijo Thomas and Sri. Anesh Paul, for the Appellant; A.S.P. Kurup, SC, UBI, for the Respondent

Judgement

Mr. Justice P.R. Ramachandra Menon

1. The petitioner is seeking for the benefit of OTS to have the liability settled under a loan transaction. The grievance in particular is, against Ext.P5 and Ext.P6 communications issued by the respondent Bank, whereby, Ext.P3 application preferred by the petitioner for OTS has been turn down, holding that, the same is not liable to be entertained, more so, when the property concerned over which security interest has been created is having much more value than the extent of amount offered by way of OTS.

Considering the facts and figures, it has been pointed out that OTS amount shall not be less than Rs. 70,90,909/- (Rupees Seventy lakhs ninety thousand nine hundred and nine only) plus further interest, as given in Ext. P6.

The petitioner seeks to rely on Ext.P1 Scheme for extending the benefit of OTS, which is stated as arbitrarily being ignored, which made her to approach this Court by filing the present writ petition.

2. The respondent Bank has filed a counter affidavit, disputing the claim, particularly challenging the ''locus standi'' of the petitioner, pointing out that Ext.P5 and Ext.P6 communications have been issued to the son of the petitioner,

who is also a guarantor in respect of the loan availed by the son- in-law of the petitioner. Neither the son, nor the son-in-law, is a party to the present petition. The Bank also contends that Ext.P1 Scheme is not applicable to the case of the petitioner and that there is no OTS Scheme in existence as on date, based on the RBI guidelines. The Bank has issued Ext. R1 Circular dated 02.11.2007, to extend some benefit to the deserving persons concerned, based on a particular formula and the amount payable under the OTS can be worked out only with reference to the mandate as given in Ext.R1. It was accordingly, that the position was intimated on to the petitioner, vide Ext.P6 and as such, no interference is possible, submits the Learned Counsel for the respondent Bank.

3. The petitioner has filed a reply affidavit, pointing out the inconsistency in the counter affidavit filed by the respondent Bank. In the course and events, the petitioner has also filed IA No. 10031/2012, producing some additional documents as Ext.P8 to Ext.P10, showing the ''fair value'' of the property and how the figure has to be worked out towards the OTS payable, even on the basis of Ext.R1 produced by the Bank.

4. The Learned Counsel for the petitioner submits that, merely for the reason that the property is having more value, the benefit of OTS is not liable to be denied to the petitioner, more so, in view of the law declared by the Apex Court on the point. The Learned Counsel further submits that even in Ext.R1, the reference made is to the ''fair value'' and not to the ''market value''. The fair value of the land, has already been given/declared by the Government vide Ext.P9 ''gazette notification'' and so also vide Ext.P10. This being the position, since the petitioner has offered much higher amount than the said value, there was absolutely no basis for having rejected the claim vide Ext. P6.

5. Ext.P1 Scheme sought to be relied on by the petitioner is obviously in respect of all accounts under M.S.M.E Sector i.e., ''Micro Small & Medium Enterprises Sector'' classified as ''NPA'' as of 31.03.2009. Clause 4.1.1 of the said Scheme stipulates that, for the purpose of definition of MSME Sector, reference has to be made to ''Micro Small & Medium Enterprises Development (MSED) Act 2006''. It has been asserted by the respondent Bank in the counter affidavit, that this Scheme is not applicable to the case in hand. That apart, clause 8 of Ext.P1 Scheme itself says, that the Scheme will be valid only up to 31.03.2010. This is being the position, in the absence of any contention by the petitioner that the said Scheme has been revalidated or extended and is applicable as on date, no reliance can be placed on the said Scheme for extending the relief in the writ petition.

6. Coming to the factual position, it is brought on record, that, in view of the default on the part of the parties, the Bank had filed an OA before the DRT, Ernakulam as O.A 338/2008, which is pending consideration. The Bank has simultaneously proceeded with steps under SARFAESI Act, which made the petitioner to approach the Tribunal by filing SA No. 311/09, wherein an interim order was passed, intercepting the coercive proceedings, subject to the condition

that the petitioner satisfied a sum of Rs. 12 Lakhs (Rupees Twelve Lakhs only), which is stated as complied with. The petitioner is stated as constrained to approach this Court by filing the present writ petition, with a different cause of action, in so far as Ext.P3 application for the benefit of OTS has been rejected vide Ext.P5 and Ext.P6, which in turn is sought to be intercepted on the grounds as mentioned herein before.

7. It is settled law, when a person is seeking for the benefit under a particular Scheme, it can be considered and dealt with only in terms of the Scheme. The factual position as to the existence of any valid OTS Scheme, but for Ext.R1, is not successfully established by the petitioner, by producing any material. Ext.R1 takes care of the situation itself, as to how the ''fair value'' is to be fixed. It is also stated that, fixation of fair value by the Government, for the purpose of registration of documents and to realize the ''stamp duty'', is not applicable to the Bank. The fair value according to the Bank, for settlement of the liability, is to be fixed strictly in terms of Ext.R1, if at all any benefit flowing from Ext.R1 is to be extended and reference to any other document or material is quite out of question. After hearing both the sides, this Court finds that, the basic dispute between the parties concerned is pending consideration before the DRT, by way of OA filed by the Bank and so also, in the SA preferred by the petitioner. This being the position, this Court finds that, the rights and liberties flowing from Ext.R1 or such other Scheme, if and when notified, can be caused to be considered by the DRT itself, at the appropriate stage and it is not for this Court to have any parallel adjudication. this Court declares that the prayer of the petitioner to extend the benefit of OTS with reference to Ext.P1 Scheme is not liable to be entertained. Interference is declined in this regard without prejudice to the rights and liberties of the parties concerned to pursue the matter before the DRT, in accordance with law.

Writ petition is disposed of.

