**(2025) 12 SHI CK 1815**

**In the High Court Of Himachal Pradesh**

**Case No :** Civil Writ Petition No 3924 Of 2019

HP State Co-Operative Bank Ltd. Through Its Managing Director — APPELLANT

Vs

State Of H.P. & Others — RESPONDENT

**Date of Decision :** 08-12-2025

**Acts Referred:**

Constitution Of India, 1950 — Article 226
Himachal Pradesh Co-Operative Societies Rule, 1971 — Rule 91, 145, 148
Code Of Civil Procedure, 1908 — Section 151, Order 10 Rule 2, Order 12 Rule 6, Order 14 Rule 1, Order 14 Rule 2
Himachal Pradesh Co-Operative Societies Act, 1968 — Section 12, 72, 73
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(2), 19
Recovery Of Debts Due To Banks And Financial Institutions Act, 1993 — Section 19(25)

**Citation :** (2025) 12 SHI CK 1815

**Hon'ble Judges :** Vivek Singh Thakur, J;Romesh Verma, J

**Bench :** Division Bench

**Advocate :** Sunil Mohan Goel, Abhinav Mohan Goel, Ramakant Sharma, Ajay Kumar, Rohit

**Final Decision :** Allowed

# Judgement

Romesh Verma, J

1. The present writ petition arises out of the order dated 12.07.2019, passed by the Additional Registrar (Administration) Co-operative Societies H.P., whereby, Appeal Nos. 329, 330 and 331 of 2016 have been disposed off by setting-aside the award passed by the Arbitrator (Bank) and case was sent back to him for fresh disposal of the dispute under Section 72 of the H.P. Co-operative Societies Act, 1968. It was ordered that Arbitrator shall decide the case within a period of four months from the date of the appearance of the parties.

2. The facts which arise in the case are that the present petitioner advanced working capital (CC) limit of Rs. 10.00 lakhs to M/S Bhag a Resorts Pvt. Ltd.

through its Managing Director Smt. Prabha Bhagra on 16.02.2004. Further, on 28.06.2005, the private respondents availed term loan of Rs. 3.00 crores vide sanction letter dated 28.06.2005 for completion/ renovation of the Hotel/Motel under the scheme of the Bank. The said term loan of Rs. 3.00 crores was sanctioned in favour of M/S Bhagra Resorts Pvt. Ltd., (respondent No.5). The present petitioner sanctioned the term loan of Rs. 3.00 crores on 28.06.2005 at the rate of 10.90% interest for a period of seven years including moratorium period of one year. The petitioner has placed on record the copy of the sanction of capital (CC) limit of Rs. 10.00 Lakhs as Annexure P-1 and sanction of term loan of Rs. 3.00 crores in favour of respondent No.5, as Annexure P-2.

3. It has been stipulated in the sanction letter, Annexure P-2 that the borrower shall repay the term loan within a maximum period of seven years including moratorium period of one year. It has further been stipulated in the sanction letter that during he moratorium period, the borrower shall repay the inte est accrued on monthly basis with the stipulation that the loan shall be repaid in seventy two equated m nthly installments (EMI) of Rs. 5.7 lakhs consisting of principal and interest. It has also been incorporated in the sanction letter that the borrower shall pay interest @ 10.90 % per annum on term loan. The nterest shall be compounded on monthly rests, however, the rate of interest and periodicity of compounding of interest shall be subject to change from time to time without notice. The sanction letter stipulates that the Bank shall charge the penal interest @ 2% per annum over the normal interest.

4. The private respondents failed to repay the said loan amount, as a result of which, the loans/advances of the private respondents became non-performing assets in terms of the Reserve Bank of India Guidelines w.e.f. 30.09 2006 Under such circumstances, the present petitioner issued notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as ‘SARFAESI Act’) to respondent No.5 for the payment of outstanding amount of Rs. 3,90,76,986.00/- crores.

5. Pursuant to the issuance of the notice, the District Magistrate, Shimla vide its order dated 14.01.2010 passed an order and the possession of the premises was taken on 03.05.2010, however, it is stated that private respondents forcibly entered the seized property by breaking open the locks on the same evening and thereafter an FIR was registered.

6. Private respondents No. 5 to 8 preferred a Civil Writ Petition No. 1767 of 2010, titled M/S Bhagra Resorts Pvt. Ltd. and others vs. Union of India and others against the action of the official respondents therein.

7. The matter came up before this Court on 03.05.2010 and it was ordered that in case the petitioners have not been dispossessed so far, further proceedings in that regard shall be deferred till 07.05.2010. This Court vide order dated 08.12.2010, passed an rder in CMP No. 10782 of 2010, whereby it was ordered

 

ha , in case, an amount of Rs. 2.00 crores, as referred to in order dated 07.05.2010, was not deposited within a period of two weeks from date of order, interim order dated 03.05.2010, as extended for 07.05.2010, shall stand vacated. The application was disposed of.

8. Thereafter, private respondents No.5 to 8 sought permission to withdraw the said Civil Writ Petition and this Court vide order dated 20.12.2010 granted permission to the present private respondents to withdraw the said Writ Petition without prejudice to the rights of the petitioners in that petition.

9. After the withdrawal of the CWP No. 1767 of 2010, private respondents No.5 to 8 preferred an application/ appeal under Section 17 (1) of the 'SARFAESI Act' before the Debt Recovery Tribunal (I), Chandigarh by filing SA No. 169 of 2010. In the said application/appeal, the private respondents sought quashment and setting-aside of the Demand Notice dated 10.04.2008, p ssession notice dated 05.05.2010 and sale no ice dated 24.12.2010. The Debt Recovery Tribunal, Chandiga h vide its judgment dated 11.02.2011 accepted the aforesaid SA filed by the private respondents alongwith I.A. Nos. 509 of 2010 and 510 of 2010 and the Demand Notice dated 10.04.2008, possession notice dated 05.05.2010 and sale notice dated 24.12.2010 issued under the provisions of 'SARFAESI Act' were set-as de for the reasons and the grounds mentioned in the judgment. Further, it was ordered that Ms.Shweta Dugal, Advocate, was appointed as Receiver, who shall handover the property, in question, to the applicants/private respondents after taking over from the Bank with advance notice to them. It was ordered that Receiver shall be entitled for a fees of Rs. 10,000/- + traveling allowances @ Rs. 8 per kilometer and other miscellaneous expenses to be paid by the applicant in advance.

10. Against order, as passed by the Debt Recovery Tribunal-I, Chandigarh on 11.02.2011, the present petitioner preferred an Appeal No. 147 of 2011 be ore learned Appellate Tribunal, Delhi. The said appeal came up for adjudication on 21.06.2011 and on he said date learned counsel for the Bank withd ew the appeal with liberty to initiate fresh action against the private respondents. It was ordered that with ut prejudice to the rights of the parties, the prayer made by the learned counsel for the applicant-Bank was accepted. Therefore, the appeal was accordingly dismissed with liberty granted to both the parties, as prayed for.

11. Pursuant to the order dated 21.06.2011, the petitioner-Bank again issued Demand Notice under Section 13(2) of the 'SARFAESI Act' for Rs. 601.00 lakhs. Before completion of notice period, the private respondents again approached the Debt Recovery Tribunal, Chandigarh and filed an application under Section 19 of the 'SARFAESI Act' read with Section 19 sub-section (25) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short 'RDDBFI Act') for compensation and damages and costs of Rs. 545.00 lakhs. The Debt Recovery Tribunal, Chandigarh directed the Bank to maintain status quo and private respondents were directed to dep sit a sum of Rs. 50 lakhs. The private responden s failed to deposit a sum of Rs. 50 lakhs, in terms of the order dated

 

09.09.2011, passed by the Debt Recovery Tribunal, Chandigarh and finally on 21.10.2011, the private respondents withdrew the aforesaid application filed before the Debt Recovery Tribunal, C andigarh. The private respondent No.6-Smt. Prabha Bhagra approached the Hon'ble Apex Court against the order as passed by the Debt Recovery Tribunal, Chandigarh for depositing of Rs. 50.00 lakhs vide its order dated 09.09.2011. The Hon'ble Apex Court vide its order dated 14.10.2011 restrained the petitioner-Bank from proceeding further under the provisions of the 'SARFAESI Act' as far as the petitioners in that Writ Petition No. 411 of 2011 are concerned.

12. The petitioner-Bank on being not able to recover the loan amount initiated proceedings under Section 72/73 of the H.P. Co-operative Societies Act by filing the arbitration proceedings in the year 2013 which were registered as Case Nos.1603 of 2013 and 1604 of 2013. The private respondents put in appearance in those proceedings and in 2014 again they preferred Civil Writ Petition No. 3915 of 2014 against the petitioner-Bank. Vide its order dated 05.06.2014, this Court ordered that the proceedings in the Arbitration case titled HP State Co-operative Bank Pvt Ltd. Vs Bhagra Resorts Ltd. pending before respondent No.2 shall remain stayed. Ultimately, the sa d Civil Writ Petition No. 3915 of 2014 was disposed off which was filed by the private respondents. The petition was dismissed as withdrawn with liberty, as prayed, by the private respondents. The Arbitrator vide its decision dated 18.01.2016, Annexures P-10 and P-11 passed the awards. In case No. 1604 of 2013, an award of Rs. 28,12,801/- was passed and as far as Arbitration case No.1603 of 2013 is concerned, the petitioners were held entitled to recover the amount of Rs. 12,03,55,133/- from the private respondents. The Arbitrator passed two different awards dated 18.01.2016.

13. Feeling dissatisfied, the private respondents preferred an appeal before Additi nal Registrar (Administration) Cooperative Socie ies, H.P. Shimla by challenging the awards as passed by the Arbitrator. The Additional Registrar (Administration) vide its order dated 12.07.2019 accepted the appeals as preferred by M/S Bhagra Resorts and the third appeal i.e. Case No. 331 of 2016 filed by the Bank was also disposed off by remitting the cases back to the Arbitrator alongwith the entire record for fresh disposal of the dispute under Section 72 of the HP Cooperative Societies Act 1968. It has been ordered that Arbitrator shall decide the case within a period of four months from the date of appearance of the parties. Against the order dated 12.07.2019 as passed by Additional Registrar (Administration) Co-operative Societies, the petitioner-Bank has filed the present Writ Petition challenging the same on various grounds.

14. We have heard Mr. Sunil Mohan Goel, learned Senior Counsel, assisted by Sh. Abhinav Mohan Goel, Advocate, for the petitioner and Sh. Ramakant Sharma, learned Additional Advocate General, for respondents No. 1 to 4 and Mr. Ajay Kumar, learned Seni r C unsel assisted by Mr. Rohit, Advocate, for responden s No. 5 to 8.

15. It is submitted by lea ned Senior Counsel for the petitioner-Bank that the

 

order of remand, as passed by Additional Registrar (Administration) Co-operative Societies is bad in the eyes of law and it is not sustainable. He has argued t at without appreciating the real point of controversy, the Additional Registrar (Administration), in a sl p-shod manner, has remanded the cases back to the Arbitrator without any plausible reasons and justification. He has further submitted that the private respondents before this Court are the borrowers from the Bank, who have availed CC limit of Rs. 10.00 lakhs and obtained term loan of Rs. 3 Crores from the Bank in the year 2005. He has also urged that even after elapse of more than 20 years, only meager amount has been paid by the private respondents and the substantial amount, which is required to be paid, has not yet been paid to the Bank. Lastly, he has contended that it shows the conduct of the private respondents that they are trying to linger on the proceedings on one pretext or the other.

16. On the other hand, learned Senior counsel for private respondents No. 5 to 8 has defended the impugned order and urged that the order is legal and valid and no interference of any kind is called for. He has further submitted that since the Arbitrator did not frame the issues and call t e respective parties for adducing evidence in respect of their contentions, therefore, the only option left w th the Additional Registrar (Admn.) was to remand the matter to the Arbitrator to decide the case afresh.

17. From the perusal of the record, it will be clear that reference under Sections 72 and 73 of the HP Cooperative Societies Act, 1968, was received in the office of Deputy Registrar Co-operative Societies (Bank), Kasumpti, Shimla-9.

18. Notices in the aforesaid reference were issued to the petitioner-Bank and M/s Bhagra Resorts through its Managing Director Smt. Prabha Bhagra (Principal Loanee), respondent No.6, Krishan Kant Bhagra (Guarantor) respondent No.7 and Surya Kant Bhagra (Guarantor) respondent No.8, herein, to appear before the Assistant Registrar Co-operative Societies (Bank) on 05.08.2013 at 11:00 A.M. The case was listed before the Assistant Registrar, Co-operative Societies (Bank), Kasumpti, Shimla-9 on 05.08.2013, on which date, Sh. B.S.Katih, Manager appeared for the Bank, Smt. Prabha Bhagra (Principal Loanee) respondent No.6, Sh. Krishan Kant Bhagra (Guarantor) respondent No.7, appeared in person and Sh. Surya Kant Bhagra (Guarantor) respondent No.8, herein, remained absent despite proper service on him. The order sheet reveals that Sh. B. S. Kaith, Manager, was directed to produce the authority letter to defend the case on the next date of hearing. As per the order sheet, the private respondents present on 05.08.2013, accepted that they have availed the term loan of Rs. 3.00 crores from the petitioner-Bank for Hotel/Motel on 24.05.2005 and due to some unavoidable circumstances could not repay the same Further, it has been recorded in the aforesaid order that private respondents are ready to repay the amount, however, some time was sought by them as they were in the process of selling some proper y. They also confirmed the outstanding balance of loan of Rs. 8,24,41,583/-(Rupees eight crores twenty fo r lakhs forty one

 

thousand and five hundred eighty three only) as on 31.07.2013. On the said date, the private respondents-borrowers demanded that t e account statement may be supplied to them and accordingly, the Bank was directed to supply the complete copy of the loan account statement from the date of commencement of the disbursement. Thereafter, the case was listed on 20.09.2013.

19. On 20.09.2013, Sh. Rajiv Dhaulta appeared for the Bank. Smt. Prabha Bhagra, the Principal debtor and Shri Surya Kant Bhagra, Guarantor-respondent No.8, also appeared on the said date. The principal debtor Smt. Prabha Bhagra produced a copy of the resolution dated 18.04.2013 on behalf of the Bhagra Resorts Pvt. Ltd., Shimla, authorizing her to defend the case. At this stage, rests of the guarantors were ordered to be exempted from the personal attendance. Since, the statements of accounts had been received by the principal debt r/b rrower from the petitioner-Bank, therefore, she sought time to check the statements in detail. Furthe , p incipal debtor, Smt. Prabha Bhagra, also prayed for and was granted two months time, on account of marriage f her elder son, to arrange the funds as the property intended to be sold did not materialize as yet. T ereafter, the case was posted on 12.11.2013.

20. On 12.11.2013, the Bank stated that the private respondents did not deposit anything qua the loan amount. On the aforesaid date, the Principal Debtor gave a cheque No. 000006 of Rs. 1,00,000/- dated 12.11.2013 to be drawn at HDFC-Bank. The principal debtor further reiterated that she is in the process of selling of her property and also being tourist season she would be trying to arrange funds and would deposit the same in the Bank. She again requested that two months' time be allowed to her. Thereafter, the case was posted on 06.01.2014.

21. On 06.01.2014, the principal debtor Smt. Prabha Bhagra gave a cheque bearing No. 278351 dated 06.01.2014 to be drawn at Axis Bank or a sum of Rs. 2,00,000/-. She again requested n the said date that the proposal of selling of her proper y is in progress and some time may be allowed to her to arrange the funds. The private respondents/borrowers also confirmed the outstanding balance in their loan account. They requested three months' time and the same was granted with the condition t at case will be listed in the month of February, 2014 i.e. on 25.02.2014 at 11:00 A.M.

22. On 25.02.2014, the principal debtor Smt. Prabha Bhagra and Shri Surya Kant Bhagra were present. On the said date, the Bank apprised that the cheque amounting to Rs. 2,00,000/- has been cleared. The Manager of the Bank made a request to the Deputy Registrar Co-operative Societies that since various opportunities have been provided to the private respondents, therefore, they may be directed to deposit a sum of Rs. 5.00 crores in the loan account before 31.03.2014. The principal loanee Smt. Prabha Bhagra and her son Sh. Surya Kant Bhagra were directed to confirm the outstanding balance as on 31.01.2014 i.e. amount of Rs. 8,91,07,1487/- + arbitration cost @ of 5% for Rs. 36,44,771.45/- as claimed by the petitioner-Bank total amounting o Rs. 9,27,46,258.46/-. The Bank showed one copy of the account statement which

 

was supplied to the private respondents and the same was objected. The request f the petitioner-Bank to deposit Rs. 5 crores before March, 2014 was partly allowed and being NPA account, the private respondents were directed to deposit a sum of Rs. 2 crores on or before next date of hearing alongwith the objection, if any, to be filed. Thereafter, the case was posted on 18.03.2014. On the said date Principal Debtor Smt. Prabha Bhagra and her son Sh. Surya Kant Bhagra, Guarantor were present, however, no amount of Rs. 2 crores as previously directed to be deposited was deposited, rather they filed the objections stating reasons that since the matter is pending before the Hon'ble Apex Court and Debt Recovery Tribunal, Chandigarh, therefore, the petitioner cannot proceed under the Arbitration proceedings. The case was posted on 24.04.2014. On the said date, Principal loanee Smt. Prabha Bhagra and Sh. Surya Kant Bhagra, Guarantor were present and they preferred an application to engage the service of a counsel. However, the said applica ion was objected to by the petitioner-Bank on the g ound that at the belated stage i.e. at the stage of arg ments, the private respondents cannot file the said application. The petitioner-Bank submitted that the said application is not maintainable keeping in view the fact that at the initial stage, the private respondents confirmed the claim of the petitioner-Bank and also deposited a sum of Rs. 3 lakhs in the loan account. The Deputy Registrar posted the matter for final arguments on 20.05.2014. On the said date, the arguments were addressed on the application filed by the private respondents. The order was reserved for decision to be pronounced on 14.06.2014 at 11:00 A.M.

23. On 14.06.2014, it was pointed out to the Deputy Registrar Co-operative Societies that private respondents have approached this Court by filing CWP No. 3915 of 2014, titled Bhagra Resorts vs. HP State Co-operative Bank Ltd. and in compliance to the order passed by this Court in the aforesaid petition on 05.06.2014, the arbitral proceedings were stayed by the Arbitrator.

24. It is pertinent to men ion here that the aforesaid writ petition came up for conside ation before this Court on 25.06.2015, on which date, the learned counsel representing the private respondents was permitted to withdraw the petition with liberty to file the same afresh at the appropriate stage.

25. Thereafter, the case was listed before Arbitrator on 07.09.2015. On the said date, Smt. Prabha Bhagra-private respondent stated that company has already applied to the Bank to consider the case of the Company under the OTS Scheme, therefore, she prayed for one month's time to pursue her case with the Bank authorities. The said request of the private respondent was allowed and she was granted one month's time to pursue the case of the Company with the Bank authorities. It has also been reflected in the order sheet dated 07.09.2015 that Smt. Prabha Bhagra verbally stated that company will try its best to liquidate the entire outstanding amount by next date. Thereafter, the case was posted on 29.10.2015 and on the said date Smt. Prabha Bhagra again stated that she had already approached the Bank for settlement of the case under he OTS Scheme

 

and prayed for and was granted two months' further time for settling her claim with the Bank. The Arbitrator posted the matter after the expiry f two months i.e. on 02.01.2016.

26. However, when the case came up for consideration on 02.01.2016, it was observed by the Arbitrator that no intimation has been received from either of the sides regarding the settlement of the case coupled with the fact that the case is pending for the last more than two years and Smt. Prabha Bhagra has been repeatedly seeking time for settlement of her claim which remained unsettled, therefore, there was no other option left with the Arbitrator but to fix the case for its decision and the matter was fixed for 18.01.2016.

27. On 18.01.2016, principal debtor Smt. Prabha Bhagra and her son Sh. Surya Kant Bhagra, Guarantor, were present. As per the order sheet, they appeared at 11:00 A.M. and presented an application in which certain objections were raised by them with regard to the maintainability of the present arbi ra ion case before the Arbitrator. Record reveals that the Arbitrator observed that both of them were informed that on 18.01.2016, the case was listed for the pr n uncement of the award as such no application could be entertained, at this stage. On the said date, both of them told the Arbitrator that they had not received a notice for their appearance for today. After filing the said application, both the principal debtor and guarantor left the place by saying to postpone the date for pronouncement of the award for about one week. Arbitrator observed in his order that both of them were informed that case was listed for pronouncement of the award and the same cannot be postponed for another date. At this stage, at 11:30 A.M. Sh. Ashwani Kumar, representative of the Bank stated that notices to the private respondents could not be served. The petitioner-Bank deputed two officials to effect the service of notice upon private respondents and as per report submitted by both the officials they both went to the residence of the parties on 13.01.2016 and 15.01.2016 to effect the service of notices upon them, but n every date, they refused to take the copy of he notice. It has also been observed that private respondents were present in their house and both the officials visited their residence. Accordingly, an award f r the recovery of Rs. 12,03,55,133/-was passed in favour of the Bank and against the private respondents.

28. It will be pertinent to mention here that the record reveals that on 07.09.2015, Smt. Prabha Bhagra, principal debtor, made a statement before the Arbitrator that she is Managing Director of M/S Bhagra Resorts and she admitted that the Bank had advanced term loan of Rs. 3.00 crores for the hotel construction and its expansion. She admitted that said amount was to be returned on the basis of monthly installments to the Bank. She stated that installments of the said loan were not disbursed to her well in time. Principal debtor also stated that she had received statements of accounts from the Bank officials for the sum of Rs. 11,45,08,851/- which was shown as outstanding against the company. She stated that company wanted to repay the amount to the Bank through OTS Scheme. She sought one month's time so that she could

 

pursue the matter with the Bank.

29. Arbitrator passed the award on 18.01.2016, whereby two awards were passed in Case Nos. 1603 and 1604 of 2013. In case No.1603 of 2013, the present petitioner-Bank was held entitled for a sum of Rs. 12,03,55,133/- and in other case No. 1604 of 2013, the Bank was held entitled for a sum of Rs. 28,12,801/-.

30. The record reveals that reply was filed by the private respondents/principal debtors dated 18.03.2014, whereby the principal stand taken by the private respondents is that the arbitration proceedings as initiated under the provisions of Section 12 of H.P. Co-operative Societies Act are not maintainable. In para 8 of the aforesaid reply, it has been denied that a sum of Rs.7,28,95,429.01/- is due to the petitioner-Bank by the private respondents. It has been stated that the amount has been inflated, illegal and wrong entries have been made in the account. It has been stated that this amount is not due from the private respondents to the Bank. On the other hand, the borrowers stated that hey have to recover a sum of Rs.5,45,00,000/- from the petitioner-Bank on account of loses, damages and compensation. As far as the availing of the loan is concerned, the private respondents have not denied the same. Similarly, no calculation has been supplied or given in t e reply that what is the total loan amount which has been availed by them and what amount they have repaid and what is the actual amount they are liable to pay to the petitioner-Bank.

31. Submission of learned Senior Counsel for the private respondents is that the application which was filed by the principal debtor on 24.03.2014 under Rules 145 and 148 of the H.P. Co-operative Societies Rule, 1971, seeking permission to take assistance of the legal practitioner to pursue the case, was not considered by the Arbitrator and similarly, an application filed under Rules 91 and 145 of the H.P. Co-operative Societies Rules, 1971 and under order 14 Rules 1 & 5 and Section 151 of CPC for framing of the issues filed on 24.03.2014 was also not considered. Therefore, the principles of natural justice have been violated and the procedure as envisaged under the HP Co-operative Societies Act has been violated. He has urged that since material illegality and irregularities have been committed by the Arbitrat r by not allowing the applications to take assistance of the legal practitioner to defend principal debtor, by not framing the appropriate issues, entire proceedings are vitiated. He further submitted that keeping in view these material irregularities, Additional Registrar (Administration) Co-operative Societies vide its order dated 12.07.2019 has rightly remanded the matters to the Arbitrator back to decide the case afresh. He also submitted that since the Arbitrator has failed to frame the issues and failed to allow the borrowers to lead evidence in support of their contentions, therefore, there is violation of principles of natural justice, which is in violation to the well settled principles of law, especially, the judgment as passed by the Hon’ble Apex Court.

32. The provisions of Order XIV of the Code of Civil Procedure read as follows:

“SETTLEMENT OF ISSUES AND DETERMINATION OF SUIT ON ISSUES OF LAW OR ON ISSUES AGREED UPON

1. Framing of issues— (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the ther.

(2) Material pr p sitions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party denied by the other shall form the subject of distinct issue.

(4) Issues are of two kinds :

(a) issues of fact,

(b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and [181][after examination under rule 2 of Order X and after hearing the parties or their pleaders], ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.”

33. The provisions of Order XIV clearly stipulate that issues are framed and the issue arises when material proposition of fact or law is affirmed by ne party and denied by the other. Material proposition affirmed by one party and denied by the other party leads to the settlement of issues. Further, it has been stip lated that at the first hearing of the suit, the Court shall, after reading the plaint and the written statement and after hearing the parties, ascertain upon what material propositions of fact or of law, the parties are at variance and shall thereafter proceed to frame the necessary issues. It has also been stipulated that no issue is required to be framed by the Court when the defendant at the first hearing makes no defence.

34. The perusal of the record shows that the private respondents have acknowledged the loan amount and undertook to repay the said amount before Arbitrator on first day when the case was listed before him on 05.08.2013. The private respondents accepted that they have availed the term loan of Rs. 3 crores from the Bank for the Hotel/Motel on 24.05.2005. The private respondents stated that due to some unavoidable circumstances they could not pay the same and they are ready to repay the same. There is categorical admission on their part alongwith the admission dated 12.11.2013, whereby, principal loanee stated that she is in the process of selling the property and being a tourist season she will be t ying to collect the funds and will deposit the amo nt to the petitioner-

 

Bank. On 06.01.2014, she again requested that the proposal of selling of her property is still in progress and sought some more time to arrange the funds. On 07.09.2015, private respondent No. 6 stated that company will be trying its best to l quidate the entire outstanding amount by the next date as she had already applied to the petitioner-Bank to consider the case of the company under the OTS Scheme. The aforesaid admissions on the part of the principal debtor itself speak that there is no dispute about the availing and payment of the loan amount. Neither in the reply, which was filed before the Arbitrator, nor in the application which was filed for framing of issues, any dispute has been raised by the private respondents which may demonstrate that disputed questions of facts are involved and it requires framing of the issues. The application which has been filed by the private respondents for framing of the issues is vague as it only says that petitioner-Bank is claiming a sum of Rs. 7,28,95,429.01/- and the said claim is disputed by the private respondents. The p ivate respondents have not averred in the application that how and under what circumstances, they are n t liable to repay the said amount. Neither any calculation has been given nor it has been pointed out t at why they are not liable to pay a sum of Rs. 7,28,95,429.01/- more than the amount which they are l able to pay. Merely, by stating that they are not liable to pay the said amount would not entitle them to raise dispute with regard to the factual matrix of the matter.

35. Under such circumstances, in our opinion, in the light of the admissions as made by the private respondents, no issues are required to be framed and the Arbitrator can proceed in the matter.

36. This Court in case titled as Dr. Om Prakash Rawal vs. Mr. Justice Amrit Lal Bahri, AIR 1994 HP 27 has held as follows:

"21. Consequently, it was necessary or the trial Court to have framed an issue ab ut the plaintiffs ownership or in other words at least to frame an issue of the ownership of Bal Krishan Rawal of the house. It is necessa y, for a ight decision of a case that appropriate iss es are framed and tried. The duty to frame appropriate issues is cast by virtue of Rule 1 f Order 14 of the Code on the Court. Issues are to be framed in respect of only those facts, which are alleged by one party and denied or not admitted by other party. They must be confined to material facts i.e. the points on which the right decision of the case depends….."

37. Therefore, in the present case, in view of the admissions as made by the private respondents, the plea as has been set up by them, that the issues were required to be framed and evidence was required to be led, does not hold good and the same requires to be negated.

38. In Uttam Singh Duggal & Co. Ltd. vs. United Bank of India and others (2000) 7 SCC 120, the Hon'ble Apex Court held as under:

"12. As to the object of the Order XII Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the objects and reasons set out while amending the said rule, it is stated that where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admi ed claim. The object of the Rule is to enable the pa ty to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled. We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where ot er party has made a plain admission entitling t e former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which, it is impossible for the party making such admission to succeed."

39. The Hon'ble Apex Court in SLP(C) No.9975/2025 in case titled as Rajiv Ghosh vs. Satya Narayan Jaiswal, decided on 07.04.2025, held as under:

"OBJECT OF AMENDMENTS

21. Rule 6, as originally enacted, enabled a court to pronounce judgment or admission "either in pleading or otherwise". It read thus:

"6. Judgment on admissions.— Any party may, at any stage of a suit. where admissions of facts have been made, either on pleadings or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties and the Court may upon such application make such order or give such judgment, as the Court may think just."

22 & 23……..

24. Rule 6(1) empowers he court to pronounce a judgment upon admissions made by parties without waiting for the dete mination of other questions.

25. Rule 6(2) states that a decree shall be drawn up in accordance with the judgment.

26. The primary bject underlying Rule 6 is to enable a party to obtain speedy judgment at least to the extent of admission. Where a plaintiff claims a particular relief or reliefs against a defendant and t e defendant makes a plain admission, the former is entitled to the relief or reliefs admitted by the latter. [See: Uttam Singh v. United Bank of India, (2000) 7 SCC 120]

27 to 32……...

33. In Uttam Singh (Supra) the plaintiff bank filed a suit for recovery of a large sum of money against the defendant. It also filed an application under Order 12, Rule 6 for judgment upon admission in respect of part of claim. The application was allowed and a decree was passed. An appeal against the decree was also dismissed by the High Court. The defendant approached this Court. It was contended before this Court by the defendant that (i) Rule 6 of Order 12 covers only those admissions made in pleadings; (ii) the effect of the admissions can only be considered at the trial of the suit; and (iii) the provision of Order 12, Rule 6 must be read along with the provisions of Order 8 and the court should call

 

upon the plaintiff to prove its case independent of so called admissions.

34. Negativing the contentions and re erring to the object of Order 12, Rule 6, the C urt bserved that "where a claim is admi ed, he court has jurisdiction to enter a judgment for he plaintiff and to pass a decree on admitted claim. The scope of Rule 6 should not be narrowed down where a party applying for judgment is entitled to succeed on a plain admissi n f the pposite party. The admission by the defendant was clear, unambiguous, unequivocal and unconditional. The courts below were, therefore, right in decreeing the suit of the plaintiff." 35……….

36. A Division Bench of the Delhi High Court very correctly laid down the following interpretation of the provision of O. 12, R. 6, CPC, in the decision of ITDC Limited v. Chander Pal Sood and Son, reported in (2000) 84 DLT 337 (DB): (2000 AIHC 1990):

"Order 12, R. 6 of Code gives a very wide discretion to the Court. Under this rule the Court may at any stage of the suit either on the application of any party or of its own motion and without determination of any other question between the parties can make such order giving such judgment as it may think fit on the basis of admission of a fact made in the pleadings or otherwise whether orally or in writing."

40. Record reveals that an advance term loan of Rs. 3 crores was sanctioned to the private respondents on 28.06.2005. Though, more than 20 years have been elapsed, however, the amount, in question, has not been repaid by the principal debtor.

41. This Court while dealing with the present matter under Article 226 of the Constitution f India is well aware that we are dealing with the ma er pertaining to the public money. In the present case, the loan amount, which has been availed about 20 years ago, is still pending and has not been repaid by the private respondents.

42. From perusal of the record, it is clear that all efforts ave been made by the private respondents to prolon the litigation and defer the payment of the loan amount on one pretext or the other.

43. Contention of the learned Senior Counsel for the private respondents is that the application which was filed by the principal debtor to take assistance of the legal practitioner to defend her case, was not considered, as a result of which, great prejudice has been caused to them.

44. In this regard, it will be pertinent to mention here that the principal debtors are the parties who are litigating for the last more than 17 years. The authorized officer had issued a notice under Section 13(2) of the 'SARFAESI Act', on 09.04.2008. Thereafter, the private respondents preferred CWP No. 1767 of 2010, which was withdrawn on 20.12.2010. The private respondents appr ached the Debt Recovery Tribunal by filing SA No. 169 of 2010 and same was allowed

 

on 11.02.2011. The private respondents also filed MA No. 63/2011 titled as Bhagra Resorts vs. State Co-operative Bank Ltd. They preferred Writ Petition No. 411 of 2011 , titled M/S Bhagra Resorts vs. Union of India in the Apex Court. Thereafter, CWP No. 3915 of 2014 was also preferred before this Court by the private respondents and the same was disposed off on 25.06.2015.

45. From the perusal of the record and the documents placed on record, it is seen that the private respondents are educated persons and they are contesting the proceedings for their cause for the last more than 17 years in different Forums/Courts including Hon'ble Apex Court. Therefore, it cannot be presumed that they were not aware about their legal rights and they were entitled to take legal assistance of the legal practitioner to defend their case before Arbitrator. As stated earlier on the very first day during the proceedings before the Arbitrator, the private respondents acknowledged the claim as put orth by the Bank and they accepted that they have availed a term loan of Rs. 3 crores from the petitioner-Bank for hotel and on account of some unavoidable ci cumstances, they could not repay the same. They acknowledged that they are ready to repay the same and some time may be allowed to them. On subsequent dates also, such statements were given by t e private respondents acknowledging availing of the loan amount. The private respondents further sought t me to settle the case under OTS Scheme from Bank and for that purpose also on various dates and occasions time was granted to them to settle the claim. However, instead to repaying the loan amount, an application was filed, which we see as an attempt to prolong the litigation for infinity. After suffering the award by the Arbitrator, now the private respondents cannot state that they have not been heard and no opportunity has been granted to them to avail their legal remedies.

46. The perusal of the order sheets of the Arbitrator clearly demonstrates that on each and every date, the private respondents were present be ore him and applications for getting assistance f an Advocate and for framing of the issues were filed at the time of final arguments. On the previous dates, the amount to be repaid was acknowledged. S bseq ently, by filing the applications, an attempt to prolong the litigation and to scuttle the proceedings was made by the private respondents for the repayment of the loan, which is public money.

47. As on 31.10.2019, Rs.20,87,78,661.01/- on account of term loan and Rs. 49,33,872.44/- on account of CC limit are recoverable from the private respondents and thereafter, as due and admissible from the private respondents and instead of paying the said amount they are trying to prolong the litigation.

48. A perusal of the proceedings before this Court also demonstrates that on 06.01.2025 in order to resolve the issue, the learned Senior Counsel appearing for the petitioner-Bank stated that in case private respondents approach the Bank with the request for OTS, then the Bank would consider their request as per law and policy in force for settling the dispute. To the said suggestion, learned Senior Counsel appearing for respondents No. 5 to 8 has submitted that loanees a e eady to submit application/ request for one time settlement and to extend

 

complete cooperation to the petiti ner-Bank for completing such process. Thereafter, the matter was posted on 12.03.2025.

49. On 12.03.2025, learned counsel for the petitioner-Bank submitted that during consideration of application preferred by respondents No. 5 to 8, the petitioner-Bank had asked the private respondents to deposit settlement amount amounting to Rs. 6,04,98,345/-vide its letter dated 19.02.2025, with further submission that in response to this offer, the private respondents have not given any undertaking for payment of the aforesaid amount.

Thereafter, in order to have instructions by learned counsel for respondents No. 5 to 8, the case was fixed on 17.03.2025. Thereafter, the matter was posted on 18.03.2025.

50. On 18.03.2025, learned Senior Counsel for the private respondents, on instructions, stated that in response to the letter dated 19.02.2025 received fr m the petitioner-Bank, a communication has been sent by the private respondents asking further concession and time to settle the said amount. On this, learned Senior Counsel for the petitioner-Bank stated that he has instructions to communicate that the payable amount calculated by the Bank is strictly in consonance with the one time settlement scheme and guidelines of the National Bank for Agricultural and Rural Development (NABARD) as well as Reserve Bank of India and there is no scope for further deduction in the amount communicated to the private respondents vide communication dated 19.02.2025 as well as extension of time granted to them, which commenced from 19.02.2025. The Court then directed respondents No. 5 to 8 to give undertaking to pay the amount within 90 days commencing from 19.02.2025 and thereafter, the matter was adjourned to 24.03.2025.

51. On 24.03.2025, learned Senior counsel appearing for respondents No. 5 to 8 submitted that he has instructions to give undertaking that respondents No. 5 to 8 are ready to make payment f an amount of Rs. 6,04,98, 345/- to the peti ioner-Bank within 90 days commencing from 19.02.2025. However, he sought three days time to give undertaking to the Bank and the time was granted and the case was listed on 01.04.2025. On 01.04.2025 undertaking given by the respondents was placed on record, whereby they agreed and undertook to pay OTS amount to the petitioner-Bank within 90 days commencing from 19.02.2025 and thereafter, the case was listed for consideration on 27.05.2025.

52. On 27.05.2025, it was ordered that in order to show their bonafide, respondents No. 5 to 8 were directed to deposit at least 50% of the amount on or before 20.06.2025 and the case was listed on 26.06.2025.

53. However, despite passage of six months’ time, nothing was done by the private respondents, which shows their conduct. For several years, they have delayed the case repeatedly and have failed to pay the public money to the petitioner-Bank well in time.

 

54. The order which has been passed by the Additional Registrar (Administrati n) dated 12.07.2019, whereby he has held that the Arbi ra or failed to frame the issues and private respondents have not been granted opportunity to lead evidence in support of their contentions, does not hold g d f r the reasons that the issues are required to be framed in those cases where the facts of the case are objected and denied.

55. The present case pertains to the recovery of the loan amount which has been availed by the private respondents and the same has not been disputed by them.

56. Therefore, in our considered opinion, once the loan amount has been acknowledged by the private respondents and there is categorical admission that they are liable to pay the said loan amount, no issue is required to be framed in the intending facts and circumstances of the case.

57. The overall circumstances of the case projects that the endeavour and the efforts of the private respondents are to prolong the litigation and to get an escape from paying the loan amount which they have availed about 20 years ago. The findings as given by the Additional Registrar (Administra ion) are against the record. The findings that Arbitrator ought to have framed issues and should have allowed the private respondents to lead evidence are err ne us and without any substance and basis and therefore, the said order passed by the Additional Registrar (Administration) dated 12.07.2019 is not sustainable in the eyes of law.

58. Accordingly, we find merit in the present Writ Petition and order dated 12.07.2019, passed by the Additional Registrar (Administration) Co-operative Societies H.P. is quashed and set-aside and he is directed to decide the appeal(s) afresh on merits as preferred by the private respondents and the petitioner-Bank.

59. Since the loan amount was availed by the private respondents in the year, 2004-05 and substantial amount has not been paid till date which is public money, therefore, the Additional Registrar (Administration) Co-operative Societies, is directed to decide the controversy, in question, positively within a period of one month rom the date of appearance. Parties to appear bef re the Additional Registrar (Administration) on 15.12.2025.

60. Consequently, present petition is allowed in the aforesaid terms with costs.

61. Pending applications(s), if any, also stands disposed off.

 