

(2022) 09 TEL CK 0061
In the Telangana High Court
Case No : Writ Petition No. 18997 Of 2021

Md. Afroz Baig

APPELLANT

Vs

State Bank Of India

RESPONDENT

Date of Decision : 19-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 226

Citation : (2022) 09 TEL CK 0061

Hon'ble Judges : K.Lakshman, J

Bench : Single Bench

Advocate : E.Madan Mohan Rao, M.Srinivas, Mettu Srinivas Reddy

Final Decision : Allowed

Judgement

1. This Writ Petition is filed to declare the letter No. SARB: HYD: PMR:MAB 21-22-335, dated 31.07.2021 and letter No. SARB: HYD: PMR:MAB: 21-22:350, dated 06.08.2021, issued by 2nd respondent as illegal and contrary to the SBI OTS 2020 Circular dated 12.10.2020 and OTS sanction letter Ref.No.1149, dated 27.11.2020 and consequently set aside the said letters and direct 2nd respondent to receive the cheque bearing No.141267, dated 27.07.2021 drawn on Axis Bank Limited, Masab Tank, Hyderabad for Rs.37,87,567/-submitted by the petitioner to 2nd respondent bank on 28.07.2021 as compliance of the final installment pursuant to above said OTS sanction letter dated 27.11.2020, and close the loan Account vide A/c.No.35424522518.

2. Heard Sri E.Madan Mohan Rao, learned Senior Counsel representing Sri M.Srinivas, learned counsel for the petitioner and Sri Mettu Srinivas Reddy, learned standing counsel for the respondent - Bank. Perused the record.

3. The petitioner herein is in real estate business. He constructs flats and sell the same to the prospective purchasers. During the course of business, he had obtained loan facility of Rs.1.55 Crores from 2nd respondent – Bank vide A/c.No.35424522518. He could not repay the said loan amount and therefore, 2nd

respondent Bank had declared the account of the petitioner as Non Performing Asset (NPA) on 30.10.2020. Despite several and specific requests, the petitioner did not repay the said loan amount and therefore, 2nd respondent Bank had filed OA No.596 of 2012 before the Debt Recovery Tribunal, Hyderabad (DRT), and the same was decreed on 17.08.2015 directing the petitioner to pay an amount of Rs.1,63,89,562.15ps.

4. In the meanwhile, respondent Bank had issued special circular dated 12.10.2020 offering SBI OTS 2020 scheme, applicable to all the NPAs as on 31.03.2020 with outstanding dues of above Rs.20 lakhs and upto Rs.50 Crores. The said OTS scheme is made by the operators of the respondent Bank throughout the country. The said scheme is a special and unique one and is non-discretionary and non-discriminatory. Pursuant to the said scheme, the petitioner herein had submitted an application on 27.11.2020 and the bank has accepted the same on the following terms and conditions:-

- i) The OTS amount payable by the petitioner is Rs.76,14,995-38ps.
- ii) Application money of Rs.3,81,000/- paid by the petitioner will be appropriated towards the OTS Amount.
- iii) Another 10% of the OTS amount will have to be deposited by the petitioner as first installment within thirty days from the date of sanction of OTS failing which the OTS sanction will be rendered infructuous and OTS treated as failed.
- iv) Another 10% of the OTS amount will have to be deposited by the petitioner as second instalment of money within sixty days from the date of sanction of OTS failing which the OTS sanction will be rendered infructuous and OTS treated as failed.
- v) The balance amount can be paid within 8 months from the date of the sanction letter i.e. on or before 27.07.2021 together with interest @ 6 months MCLR on reducing balance basis effective from the date of the letter dated 27.11.2020 i.e. to be paid on or before 27.07.2021, failing which the OTS Sanction will be rendered infructuous.
- vi) No interest will be charged if the entire OTS amount is paid within six months from the date of the offer letter dated 27.11.2020.
- vii) The petitioner is eligible for additional incentive of 15% on the OTS amount, on making payment of the entire OTS amount.
- viii) The petitioner is eligible for additional incentive of 10% on the OTS amount, if the petitioner pays the entire OTS amount within two months from the date of sanction and 5% if the petitioner pays the OTS amount by 31.03.2021.
- ix) The petitioner is eligible for incentive of 7.5% on the OTS amount, if the petitioner pays 50% of the OTS amount within one month from the date of sanction and 5% if the petitioner pays the 50% of the OTS amount within two months from the date of sanction.

The payments made by the petitioner are as follows:-

Rs.3,81,000/- paid on 27.11.2020.

Rs.7,62,000/- paid on 24.12.2020

Rs.7,62,000/- paid on 27.01.2021

Rs.22,00,000/- paid on 17.07.2021

Thus, in all, the petitioner had paid an amount of Rs.41,05,000/- to the respondent bank and did not pay the loan installments i.e. balance amount by 27.07.2021 which is the due date for payment as per the terms of OTS accepted by the respondent bank.

5. The petitioner herein had submitted letter dated 28.07.2021 duly enclosing a cheque bearing No.141267, dated 27.06.2021 drawn on Axis bank Limited, Masab Tank branch for Rs.37,87,567/-(Rs.35,09,995-38ps + interest of Rs.2,77,571-62ps). But the same was not accepted by the respondent – Bank on the ground that the petitioner herein has not paid the aforesaid amount by 27.07.2021 as per the terms and conditions of the OTS Scheme. Therefore, the bank vide letter dated 31.07.2021, cancelled the OTS scheme and requested the petitioner to repay the entire outstanding amount together with interest. Challenging the same, the petitioner herein has filed the present writ petition.

6. Sri E.Madan Mohan Rao, learned Senior Counsel would submit that the petitioner herein is in the real estate business, He sustained huge loss due to the COVID-19 pandemic situation. However, to pay the said amount in terms of OTS, the petitioner herein had sold his agricultural land situated at Cheemaldari Village, Momipet Mandal, Vikarabad District, by way of executing agreement of sale dated 27.07.2021, mobilized funds and paid the said amount of Rs.37,87,567/- by way of above said cheque on 28.07.2021 along with a letter dated 28.07.2021. Thus, there is delay of only one day as on 28.07.2021. The available balance with the petitioner account was Rs.37,90,000/-. In proof of the same, he had filed bank statement for a period from 01.08.2020 to 31.07.2021. Thus, according to him, there is only one day delay. Even then, the respondent bank, instead of accepting the said amount, cancelled OTS and returned the said cheque along with the letter dated 31.07.2021. The bank failed to consider the request made by the petitioner that due to the present COVID-19 pandemic situation, the petitioner is unable to pay the loan amount within the stipulated time i.e. 27.07.2021. He has also placed reliance on the order dated 02.07.2020 in W.P.No.9408 of 2020 and order dated 15.09.2021 in W.P.No.13092 of 2021 passed by Division Bench of this Court wherein it was considered the present COVID-19 pandemic situation and extended the time for payment of the amount agreed under OTS and directed the bank to receive the same.

7. Learned counsel appearing for the 2nd respondent would submit that the petitioner herein failed to pay the balance amount by the stipulated time i.e. dated 27.07.2021, the 2nd respondent has cancelled acceptance of OTS and

requested the petitioner to pay the entire amount. Having agreed for the said amount, it is the duty of the petitioner to clear the entire amount as per the agreed terms. In the OTS acceptance letter dated 27.07.2020, there is a default clause stating that if the petitioner fails to pay the amount, the OTS shall be cancelled. Therefore, according to him, the petitioner has to pay the entire amount. With the said submissions, he sought to dismiss the present writ petition.

8. It is relevant to note that the respondent bank has admitted that the petitioner herein had paid an amount of Rs.41,05,000/- within the time i.e. on or before 17.07.2021 and failed to repay the remaining amount by 27.07.2021. 2nd respondent in paragraphs No.3(g) of the counter affidavit categorically admitted that the petitioner herein had submitted letter dated 28.07.2021 duly enclosing the aforesaid cheque for Rs.37,87,567/- (Rs.35,09,995.38ps + interest of Rs.2,77,571.62 paise). Since the petitioner has not paid the said amount by 27.07.2021, 2nd respondent has treated the OTS cancelled and requested the petitioner to pay the entire outstanding amount vide its letter dated 31.07.2021.

9. In proof of the sale of the property, the petitioner herein had filed agreement of sale, dated 27.07.2021. In proof of the availability of funds by 28.07.2021, he had filed the aforesaid statement of account for a period from 01.08.2020 to 28.07.2021. Perusal of the said statement would show that there was balance of Rs.37,80,000/- in the account of the petitioner by 28.07.2021. Thus, there is delay of only one day.

10. 2nd respondent vide letter dated 31.07.2021 returned the aforesaid cheque to the petitioner herein on the ground that the petitioner herein has not paid the said amount within the stipulated time i.e. by 27.07.2021. Moreover, vide letter dated 06.08.2021, 2nd respondent has informed the petitioner that it had appropriated the said amount of Rs.41,05,000/- paid by the petitioner to his loan account.

11. It is relevant to note that in Anu Bhalla Vs. District Magistrate, Pathankot CWP-5518-2020, dt.22.09.2020(DB), the Division Bench of Punjab and Haryana High Court held that High Court in exercise of its jurisdiction under Article 226 of the Constitution of India is having power to extend the period of settlement as of originally provided for in the OTS Letter. In the said case, the Division Bench has laid down certain illustrative guidelines to be considered cumulatively or individually on facts on case to case basis whether an applicant would be entitled for extension of OTS or not and the same are mentioned below:-

i. The Original Time provided in the Settlement-in our considered opinion the first and foremost aspect to be noticed would be the time period originally granted by the bank to pay off the settlement amount. If the time period originally stipulated in the settlement letter to pay off the settlement amount is short or not excessive, the case for extension then could be considered. It is to be noticed that the borrower is to arrange funds to complete the OTS. If reasonable time

period is not given, the very purpose of settlement would be defeated. In that eventuality application for extension can be considered so that the borrower gets a reasonable time to clear off the settlement and the deposit of substantial amount and the ultimate purpose of settlement is achieved.

ii. Extent of payments already deposited under the settlement or before filing the petition- while considering an application for extension of time under OTS, the prime objective to be noticed is the intention of the borrower to culminate the settlement. If the borrower has already paid substantial amounts, to the creditor under the OTS, and for some remaining amounts is seeking a reasonable extension, such requests can be considered favorably. This shows, that the applicant had an intention to clear the settlement and the deposit of substantial amounts, is an indication in this regard.

iii. Reasons which led to delay in the payment- it is important to notice, the reasons, which led to delay on the part of the borrower. If the borrower was prevented by certain reasons or circumstances beyond his control, it could be a reason to consider an application for extension favorably. It would be imperative for the borrower to show, that he made his best efforts to ensure that the requisite amounts, are arranged within the specified time, but in spite of all his best efforts, he could not arrange the same.

iv. Payments having been accepted by the bank/Financial institutions, after the stipulated date – if the bank or the financial institution has been accepting the payments from the borrower towards the settlement even after the stipulated period of time, it shows that the time was not the essence of contract. It would be apparent from such conduct of the parties, that certain amount of relaxation or flexibility in making the payment of OTS amount is reserved between the parties.

v. Bona fide Intent of the borrower to pay the remaining amounts under the settlement- In order to test the bona fide intention of such an applicant, it could be reasonably be tested while asking such an applicant to deposit some further amount, towards the balance amount before calling upon the bank to consider the issue of the extension. If such amounts are deposited under the orders of the court and the bona fides are established, such an applicant would be entitled for a favorable consideration of an application for extension. We would like to add a caveat that if for any reason, the effort doesn't lead to extension of time, as prayed for by the petitioner, then the amount deposited by the borrowers/depositors under the interim orders of the court, would have to be returned by the creditor to the petitioner. We draw strength from the recent judgment of the Hon'ble supreme court in Kut energy Pvt. Ltd .v, Authorized officer, Punjab National Bank bearing Civil Appeal No.6016-6017/2019 decided on 20.08.2019. In the said case, the petitioner therein deposited upfront amount in the registry of the court to show its bona fide in support to its OTS proposal which was offered for consideration of the bank. The bank while rejecting the proposal sought to adjust the upfront amount against the contractual dues. The plea of

refund raised by the petitioner was rejected by the high court which led to filing of an appeal before Hon'ble Supreme court. While allowing the appeal, it was held the deposit of the amounts in terms of interim order of high court was only to show the bona fides of the appellants when the revised order was made by them. The deposit was not towards the satisfaction of the debt in question. Hence, the bank was not justified in retaining the said upfront amount, while rejecting the OTS offer of the appellant therein and hence the bank ought to have refunded the upfront amount, if the OTS offer of the borrower was found to be unacceptable.

vi. Time period being demanded by the applicant to clear the remaining/balance settlement amount.- An applicant whose intention would be to clear the balance settlement amounts, would not claim for a unreasonable period of an extension, as otherwise, the intention would be to gain more time, without any actual intent to clear the settlement. In the facts and circumstances of each case, the Courts would therefore determine a reasonable period, to enable the borrower to clear the remaining settlement amount, subject of course, to payment of reasonable interest for the delayed period, to balance the equities.

vii. Attending factors and circumstances:- Attending factors and circumstances involved, while making an application for extension play an important role to identify eligible and deserving cases as also to determine the extent of extension to be granted. For example , the current situation where the entire country has been adversely effected on account of COVID-19 pandemic, the difficulties in arranging the amounts could be taken note of while determining the period of extension to be granted to an applicant. Further, accounts which have suffered losses and became NPA on account of having suffered antural calamities, unfortunate accidents, fire incidents, thefts, damage by floods, storm etc., and have come forward for an eventual settlement, can also be considered for extension of time.

viii. Irreparable loss and injury to the applicant:- While examining an application for extension of settlement, it could also be seen to be noticed, the extent of an injury to be suffered by an applicant.

12. In Samarth Woolen Mills Vs. Indian Bank (Erstwhile Allahabad Bank) MANU/PH/0719/2022 in CWP No.15895 of 2020 (O&M), decided on 04.06.2022 by the Division Bench of Punjab and Haryana High Court, relying on the principle laid down by the Division Bench of the same Court in Anu Bhalla (supra) held that High Court in exercise of its inherent power under Article 226 of the Constitution of India can extend period mentioned in the OTS letter under certain circumstances. In the said case, considering the fact that the Loanee had paid the entire amount of OTS though with some delay and the circumstances of the case justified and granted extension of time by about six months and the said delay, the bank cannot be compensated by payment of interest.

13. Another Division Bench of P&H High Court in Hindustan Trading Company Vs.

Indian Overseas Bank order dated 15.03.2022 in CWP.No.15579 of 2021, has also reiterated the said principle and granted extension of time to the petitioner for making payment as per the sanctioned OTS.

14. In *Sardar Associates Vs. Panjab & Sind Bank* (2009) 8 SCC 257, the Apex Court held that the Reserve Bank of India is a statutory authority. It exercises supervisory power in the matter of functionings of the Scheduled Banks. The matter relating to supervision of Scheduled Banks is also governed by the Reserve Bank of India Act, 1934. It held that the guidelines were issued by the Reserve Bank of India by reason of a letter dated 3.09.2005 addressed to the Chairman/ Managing Director of all public sector banks. It clearly refers to a circular dated 19.08.2005 issued by the Reserve Bank of India in terms whereof it was directed that one time settlement scheme for recovery of NPA below Rs. 10 crore was laid down. The said letter was issued pursuant to the aforementioned circular in terms whereof one time settlement scheme was formulated for recovery of NPA below Rs. 10 crores. It was categorically stated therein that the same was required to be implemented by all public sector banks. The guidelines issued were to provide a simplified, non- discretionary and non-discriminatory mechanism therefor in SME sector.

15. The Apex Court further held that the public sector banks have to implement the guidelines of RBI relating to OTS as per its decision in *Central Bank of India Vs. in Central Bank of India v. Ravindra* (2002) 1 SCC 367, that the Board of Directors of Bank in the said case could not have deviated from the said guidelines and it's conduct was violative of the equality clause contained in the RBI guidelines and also Article 14 of the Constitution of India. The bank itself has made an offer to accept the proposal of the payment in regard to enforcement of OTS pursuant to the RBI guidelines and it was certainly aware of the amount of securities lying with it.

16. In *M/s Indo Swiss Time Limited vs Umrao* AIR 1981 P H 213, the Full Bench of Punjab & Haryana High Court held that if there is direct conflict between the decisions of the Apex Court rendered by two equal Benches, the High Court must follow the judgment which appears to it to lay down the law more elaborately and accurately. The mere incidence of time whether the judgment earlier or later could hardly be relevant.

17. In *Punjab and Sind Bank Vs. Oberoi Cars Pvt.Ltd.* Man/DE/1668/2022 Delhi High Court relying on the terms of OTS Policy therein, held that the High Court can extend timelines of OTS on examination of the facts therein and also on satisfying the reasons mentioned by the loanee. The said principle was reiterated by the High Court of Kerala at Ernakulam in WPC No.19673 of 2021, dated 03.01.2022.

18. The sum and substance of the above stated judgments is that this court by invoking its inherent powers under Article 226 of the Constitution of India can extend the time to the loanee to pay the amount agreed under OTS on satisfying

the reasons mentioned therein on examination of the facts. In the similar circumstances, the Division Bench of this Court has already extended the time.

19. In the present case, it is specifically contended by the petitioner that he is doing real estate business, due to the present COVID-19 pandemic situation, he sustained loss. However, to clear the loan, he sold the property and received money from the purchaser and deposited the same in the account and paid the entire loan amount including the interest vide his letter dated 28.07.2021. There is only one day delay. Therefore, according to this Court, it is a fit case to extend the time to the petitioner to repay the loan amount.

20. In view of the same, this writ petition is allowed. The letters, dated 31-07.2021 and 06.08.2021 issued by 2nd respondent bank are set aside. 2nd respondent bank is directed to receive the said amount of Rs.37,87,567/- (Rs.35,09,995.38ps + interest of Rs.2,77,571.62ps) from the petitioner and close the loan account bearing No.A/c.No.35424522518 of the petitioner. Ten days time from today is granted to the petitioner to clear the said amount along with interest, at the agreed rate between the petitioner and 2nd respondent Bank, failing which, 2nd respondent bank is at liberty to proceed with the matter in accordance with law.

Miscellaneous Petitions, if any, pending, shall also stand closed.