

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR

**BEFORE
SHRI JUSTICE SUJOY PAUL
&
SHRI JUSTICE PRAKASH CHANDRA GUPTA
ON THE 22nd JUNE, 2022**

WRIT PETITION No. 2285/2022**BETWEEN :-**

MANISH SHARMA S/O LATE
SHRI J.D. SHARMA AGE-49
R/O SHRI SHUBHAM
HOSPITAL AND RESEARCH
CENTRE SITUATED AT
HOUSE NO.360 NAGPUR
ROAD JABALPUR.

.....PETITIONER

(BY SHRI AMIT KHATRI, ADVOCATE.)

AND

1. BANK OF INDIA, THROUGH
ITS AUTHORIZED OFFICERS
MAIN BRANCH ASHIRWAD
MARKET JABALPUR.
2. CHIEF MANAGER BANK OF
INDIA, MAIN BRANCH
JABALPUR

.....RESPONDENTS

(BY RAJESH MAINDIRETTA, ADVOCATE FOR THE
RESPONDENT/BANK)

*This writ petition coming on for hearing this day, **Shri Justice Sujoy Paul**, passed the following :*

ORDER (Oral)

In this petition, the petitioner has prayed for following reliefs :-

(i) To issue a writ in the nature of mandamus directing the Respondents to issue the no dues certificate and release the title deed of the mortgaged property in the interest of justice.

(ii) To issue a writ in the nature of certiorari to quash the order dted 27.09.2019 (Annexue P-1) in the interest of justice.

(iii) To issue a writ in the nature of mandamus to quash proceedings in OAEX 46/2011 pending before the Recovery officer DRT Jabalpur in this petition.

(iv) To issue a writ in the nature of mandamus to quash the letter dated 06.02.2013 (Annexure P-6) in this petition.

(v) To issue any other suitable directions/orders along with cost of the petition.

2. This matter has a chequered history. The parties have fought a long drawn battle in the corridors of the Courts. This is also the second visit of the petitioner for almost claiming the same relief from this Court which was claimed in W.P. No.21167/2019 which was dismissed as withdrawn

on 22.11.2021 with liberty to the petitioner to approach the respondent/Bank.

3. In turn, the petitioner approached the respondent/Bank and being aggrieved with the inaction of respondent/Bank to settle the amount again approached this Court.

4. Draped in brevity, the relevant facts are that the petitioner's wife took a loan for establishing a Hospital. The loan was secured by mortgaging the immovable property belonging to the petitioner. Since borrower did not maintain the financial discipline, the Bank invoked Section 13(2) of **the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002** (SARFAESI ACT) and issued demand notice dated 23.07.2007 seeking a demand of Rs.1,31,42,423/- followed by another notice issued under Section 13(4) of the Act issued on 30.10.2007 for taking symbolic possession of the property.

5. The notice under Section 13(4) of SARFAESI ACT was called in question before Debts Recovery Tribunal (DRT) in S.A.No.57/2007. During the pendency of said S.A., the respondent/Bank proceeded to fix the date of auction of mortgaged property.

6. On 21.09.2010, respondent/Bank published a fresh Auction Sale notice fixing the auction on 21.09.2010. The property was sold and a sale

certificate was also issued. Aggrieved, petitioner filed Miscellaneous Application No.85/2010 in pending S.A.No.57/2007 questioning the Auction Sale held on 21.09.2010. The DRT by order dated 22.11.2010 (Annexure P/15) allowed the application and set aside the Auction Sale.

7. The S.A.No.57/2007 was ultimately dismissed by DRT on 16.08.2010 (Annexure P/16 with rejoinder). The petitioner feeling aggrieved by said order of DRT, filed a statutory appeal before Debts Recovery Appellate Tribunal (DRATs) Allahabad.

8. The said appeal was registered as Case No.R-12/2011 by Appellate Tribunal and was heard on the question of admission on 21.01.2011. While admitting the appeal, the petitioner was directed to deposit Rs.50 Lacs with respondent/ Bank in the form of FDR with further observation that if amount is deposited, the Bank shall not take any coercive steps against the petitioner.

9. Shri Amit Khatri, learned counsel for the petitioner submits that in obedience of DRAT's order dated 21.1.2011, the petitioner deposited Rs.50,00,000/- with the Bank and further Rs.8,00,000/- were deposited prior to filing of appeal before the DRAT. Thus, in total amount of Rs.58,00,000/- was already deposited by the petitioner when matter came up before DRAT on 6.1.2012. The DRAT on 6.1.2012 opined that the case stands settled/compromise for a sum of Rs.65,00,000/- further to be paid

by the appellant in fifteen equal installments. The first installment shall fall due on 15.2.2012 and next installment will fall due on 15th of each month. It was made clear by DRAT that in case the appellant fails to deposit any of the installments then the Bank shall be free to proceed with the auction of the property and recover the complete original amount as per agreement entered into between the parties while securing the loan.

10. Since representative of the Bank was not present before the DRAT on 6.1.2012, it was observed that it will be open to the Bank to apply for review, if they are not satisfied with the order and conditions mentioned in the order dated 6.1.2012.

11. The DRAT in its aforesaid order dated 6.1.2012 further opined that if appellant pays the amount even before the fifteen installments were fixed, the Bank shall issue no dues certificate, if it receive its full dues as per settlement. The appeal was accordingly disposed off.

12. The respondent-Bank filed a review petition No.26/2012 feeling dissatisfied by order dated 6.1.2012 passed in Appeal No. R-12/2011. After hearing both the parties, the DRAT decided the review petition on 28th February, 2012. The DRAT allowed the Bank to charge interest at the rate of 10% per annum on the reducing balance of Rs.65,00,000/-.

13. The Bank cancelled the compromise proposal by issuing order dated 6th February, 2013 (Annexure P/6). The petitioner filed a Review Petition No.158/2013 before the DRAT which was allowed on 4.4.2013 (Annexure P/7) whereby rescheduling the earlier installments fixed. In furtherance of DRAT's order dated 4.4.2013 passed in the said review, the petitioner deposited Rs.15,00,000 + 5,00,000= 20,00,000/- on 9.4.2013 and 24.4.2013 respectively. The petitioner also deposited Rs.6,00,000/- on 3.5.2013 thereby deposited in total 70.25 Lakhs.

14. Shri Amit Khatri, learned counsel for the petitioner place heavy reliance on para-5.8 and 5.9 of the writ petition wherein petitioner has pleaded about the dates and amounts paid to the Bank by the petitioner. It is urged that while filing return, the Bank has not refuted the aforesaid pleadings. In addition, reliance is placed on RTI information furnished by the Bank on 7th January, 2022 wherein it is averred that within 15 months from 28.2.2012, the petitioner had to pay remaining Rs.40,354/- (Forty thousand three hundred fifty four).

15. The respondent-Bank filed W.P. No.8579/2013 before this Court assailing the review order of DRAT dated 4.4.2013 and this Court by order dated 12.2.2015 (Annexure P/8) set aside the said review order dated 4.4.2013.

16. The petitioner, in turn filed M.A. No.284/2014 before the DRAT for seeking return of original title deed and issuance of no dues certificate. The DRAT by impugned order dated 27.9.2019 (Annexure P/1) dismissed the M.A.

17. As noticed, petitioner filed W.P. No.21167/2019 assailing the said order dated 27.9.2019 which was allowed to be withdrawn with liberty to approach the Bank by preferring representation dated 9.12.2021 (Annexure P/11) followed by reminders dated 10.1.2022 and 22.1.2022.

18. Shri Khatri contended that the said representation and reminders went in vain. Thus, petitioner filed an application seeking certain information under the **Right To Information Act, 2005 (RTI Act)**. The bank by a communication dated 07.01.2022 (Annexure P/12) furnished the relevant information which shows that petitioner deposited Rs.70,24,922/- within 15 months from 28.02.2012.

19. Shri Amit Khatri has taken pains to contend that petitioner has deposited the entire requisite amount within stipulated time of 15 months, although there is irregularity in making such payments in terms of installments. Putting it differently, the desired amount was indeed paid, but it could not be paid in 15 equal installments. Once bank has received the desired amount, it should not have taken a hyper technical approach

and cancelled the offer by contending that amount has not been paid in equal installments.

20. Reliance is also placed on the documents dated 03.12.2020 and 03.09.2021 (Annexure P/13) whereby the bank itself informed the petitioner that petitioner is required to pay only Rs.16,587/-. If the petitioner settles that amount in the National Lok Adalat scheduled on 12.12.2020 and on another date, the settlement will take place. However, the said notices (Annexure P/13) were cancelled by the Bank for the reasons best known to it.

21. The Bank, in turn issued an a sale proclamation dated 16.03.2022 (Annexure P/14). The DRT in OAEX No.46/11 invoked power under Rule 53 of the relevant rules and published proclamation in local newspaper on 20.11.2021. The auction proceedings were scheduled to be taken up on 16.03.2022. These proceedings, as well as Execution proceedings are called in question in this petition.

22. Learned counsel for the petitioner placed reliance on **(2018) 14 SCC 735 (P. Vijayakumari and another vs. Indian Bank)** and urged that this matter has tremendous similarity with that of P. VijayaKumari's case. In the said case also the amount was settled in the Lok Adalat but it was paid with a delay of 320 days. In the instant case, there is not delay in making the payment, there is only an irregularity in following the

financial discipline of making payment in equal installment. In this backdrop, as decided by the Supreme Court in the said case, it will be unreasonable to deny relief to the petitioner when the amount directed by DRAT stood paid. The interest rate as directed by the Supreme Court can clinch the issue. The Supreme Court directed to pay Simple interest @24% p.a. on the amount agreed to in the Lok Adalat. Thus, following the said principle, this matter can be settled.

23. Another reliance is made on **(2020) 11 SCC 399 (Sudhakar Baburao Nangnure vs. Noreshwar Raghunathrao Shende and others)** and **(2005) 5 SCC 91 (Haryana State Coop. Land Development Bank vs. Neelam)**. Both the judgments are pressed into service to bolster the contention that the principles of *Res Judicata* or public policy will not be a hurdle for maintaining the present petition. In the previous round, no view was expressed on merits and petitioner was given opportunity to approach the bank. The petitioner indeed approached the bank but his grievances were not settled and therefore, approached this Court. Thus no technicality comes in the way of the petitioner.

24. The doctrine of legitimate expectation will hold the field submits Shri Amit Khatri. Reliance is placed on a recent Division Bench judgment of this court passed in W.P. No. 22127/2021 **(Mohanlal Patidar Vs. Bank of Maharashtra)** decided on 21st February, 2022. It is submitted

that the petitioner has fulfilled his part of obligation within stipulated time and therefore had a legitimate expectation that his offer will be accepted. Petitioner also expressed his willingness to pay if anything further is remaining but bank did not furnish him the necessary information about said payment promptly. In this backdrop, the said doctrine should be made applicable on the instant case.

25. Furthermore, reference is made to **Union of India v. N. Murugesan, (2022) 2 SCC 25** to submit that conduct of bank shows approbate and reprobate or in other words blowing hot and cold in the same breathe. The said conduct cannot sustain judicial scrutiny. Thus, it is argued that the petition may be allowed and desired benefits may be given to the petitioner.

26. Contesting the aforesaid contentions, Shri Rajesh Maindiretta, learned counsel for the Bank submits that this writ petition is not maintainable. The only difference in this petition and the previous petition is that petitioner has assailed the sale proclamation order in the relief clause of the present petition. Otherwise, both the petitions if examined in juxtaposition are *verbatim* same.

27. Shri Maindiretta further submits that against the sale proclamation order issued by the Recovery Officer of DRT, petitioner has a statutory remedy of appeal under Section 30 of the **Recovery of Debts and**

Bankruptcy Act, 1993 (Act of 1993). As per Section 30-A of 1993 Act the petitioner is required to deposit 50% of the amount of debt due. In order to wriggle out of said statutory requirement of deposit, the petitioner made an effort to short-circuit the proceedings and directly approached this Court. The petitioner may be relegated to avail the remedy before the DRT.

28. The next contention of learned counsel for the bank is that in this petition which assails the order of DRAT dated 27.09.2019 (Annexure-P/1), this court is obliged to examine the legality, validity and propriety of said judgment dated 27.09.2019. In the said judgment there is no illegality which warrants interference by this Court.

29. It is strenuously contended by the learned counsel for the Bank that petitioner has neither deposited the entire amount within 15 months nor deposited the amount in 15 equal installments within stipulated time as per DRAT's order dated 06.01.2012. Thus, no fault can be found in the impugned judgment dated 27.09.1999. Moreso, when the subsequent order of review dated 04.04.2013 was set aside by this Court on 12.02.2015 in W.P No. 8579/2013.

30. Interestingly, Shri Maindretta also placed reliance on the same RTI information dated 07-01-2022 and urged that Column-9 of said information, makes it clear that in irregular installments, the petitioner

had deposited Rs.70,33,605/- upto 31-03-2020. The information in Clause-10 makes it clear that the petitioner did not pay the original amount of Rs. 40,354/- within stipulated time. Apart from the aforesaid, the petitioner was required to pay the interest from the date petitioner's account became NPA. The parties informed the Court that the petitioner account became NPA on 23.07.2007. Therefore, Shri Maindretta, learned counsel for respondent/Bank submits that after counting the interest, the Bank has quantified the amount of Rs.4,13,48,716/- which is required to be paid by the petitioner. Thus, neither law nor equity is in favour of the petitioner.

31. The parties confined their arguments to the extent indicated above.

32. We have heard the parties at length and perused the record.

Maintainability :

33. The Bank has raised two fold objections regarding maintainability of this petition. Firstly, it is argued that previous petition W.P. No.22167/2019 was dismissed as withdrawn with the liberty to approach the Bank. No liberty was given to the petitioner to approach this Court again. Thus, second petition is not maintainable. The previous order of this Court dated 22.11.2021 shows that petitioner prayed for withdrawal of the petition with the liberty to approach the respondent/Bank. While granting aforesaid liberty, petition was dismissed as withdrawn. It was

made clear that Court has not passed any order on merits regarding claim of the petitioner. Thus, the question is whether such an order passed will preclude the petitioner to file this petition. In our opinion, the petitioner as per liberty granted in the previous round approached the Bank by filing umpteen number of representations for his grievance but none could fetch any result. The representation dated 09.12.2021 (Annexure P/11) and reminders dated 10.1.2022 and 22.01.2022 leaves no room for any doubt that petitioner made repeated efforts to know the amount due (if any) so that in obedience of DRAT's aforesaid order, it can be paid and account can be closed. We find substance in the argument of Shri Amit Khatri, learned counsel for the petitioner that preferring of previous petition and repeated representations/reminders aforesaid shows keenness and willingness of the petitioner to pay the amount due to the Bank. In this backdrop, whether principle of *res judicata* or public policy will be a hurdle or not for a second petition is the first question about maintainability.

34. In our judgment, neither *res judicata* nor public policy is an impediment for the petitioner to approach this Court again. In the case of **Neelam (supra)** the Apex Court considered its previous judgment in **Sarguja Transport Service vs. STAT (1987) 1 SCC 5** and opined that a writ petition could have been dismissed on the ground of availability of

alternative remedy. The alternative remedy, in turn, can be availed. Thereafter, writ petition can be filed. As noticed above, in furtherance of previous order of this Court, petitioner availed the remedy of approaching the Bank and when his efforts could not produce any result, he filed this petition. In **Sudhakar Baburao Nangnure (supra)**, the Apex Court held as under :-

“**28.** In the present case, we find, for the reasons which we have indicated above, a clear distinction on facts. While disposing of the earlier special leave petition to enable the appellant to pursue his remedies on the contention that the issue of catch-up though raised was not considered by the High Court, this Court expressly clarified that it had not considered the matter on merits. In the absence of such a clarification, the withdrawal of the special leave petition would have led to the inference that the appellant had not been granted liberty to move this Court afresh. On the other hand, the clear purpose and intent of the observation that this Court had not considered the matter on merits was to keep open all the remedies of the appellant before the High Court in the first instance and thereafter before this Court on the issue of the catch-up rule.”

(Emphasis Supplied)

35. In the previous round, this Court did not express any opinion on

merits and merely left it open to the petitioner to approach the Bank. Thus, this petition cannot be thrown to the wind by holding it is not maintainable. Second ground of maintainability is limited to one relief only i.e. whether petitioner can challenge the order of recovery officer of DRT in this writ petition against which indisputably, a statutory appeal is available. This aspect relating to this limited and singular relief will be considered by us in the later portion of this order.

Directions of DRAT :

36. The relevant portion of order of DRAT dated 06.01.2012 reads as under :-

In view of the aforesaid, the case stands settled/compromised for a sum of Rs. 65.00 lacs further to be paid by the appellant in 15 equal installments. The first installment shall fall due on 15.02.2012 and the next installments will fall due on 15th of the each month. It is made clear that in case, the appellant fails to deposit any of the installments then the Bank shall be free to proceed with the auction of the property and recover the complete original amount as per the agreement entered into between the parties while securing the loan. However, It is further directed that since the representative of the Bank is not present, therefore, if the Bank has any objection to this settlement then it will be open for the Bank to apply for review of this order.

However, it does not mean that the installments as directed to be paid by the appellant shall be stopped under the garb of review application. However, it is also made clear that if the appellant pays of the amount as per settlement even before the 15 installments then the Bank shall issue no dues certificate, if it receives its full debts as per this settlement and accordingly, the present appeal stands disposed off.

(Emphasis Supplied)

37. Another relevant order of DRAT dated 28.02.2012 reads thus :-

An application for review is moved to review the order dated 06.01.2012 passed by this Tribunal. By the said order, the appeal has been disposed of on the basis of the compromise. The Bank has accepted the receivable amount for a sum of Rs. 65.00 lacs.

It is contended that the review petitioner has no objection to the amount, but he submits that since this Tribunal has given a considerable long period for the purpose of depositing the amount by the original appellant and this Tribunal has not given any direction for charging the interest on the reducing balance. It is contended that since a considerable long period has been given by this Tribunal to deposit the amount of Rs. 65.00 and the schedule for the same has been given that the total amount of Rs. 65.00 lacs is to be deposited in 15 equal installments therefore a direction for charging the interest

on the reducing balance is necessary.

While passing the order of compromising this Tribunal has also given liberty to the Bank to apply for the review because on the date when the compromise was recorded the representatives of the Bank was not present.

Keeping in view of the facts and circumstances of the case it is directed that the Bank shall charge the interest on the reducing balance of Rupees 65 lacs @ 10% per annum.

In view of the aforesaid the application for review stands disposed of.

(Emphasis Supplied)

Other findings :-

38. A plain reading of both the orders aforesaid shows that the petitioner was directed to pay a sum of Rs.65 lacs to the Bank in 15 equal installments beginning with 15.2.2012. By order dated 28.2.2012, the DRAT permitted the Bank to charge interest on the reducing balance of Rs.65 lacs @ 10% per annum.

39. In para- 5.8 of the writ petition, the petitioner has reproduced a chart which contains the dates and the amount paid in installment to the Bank. The chart reads as under :-

Sl. No.	Dates	Amount
1.	21.02.2012	4,35,000.00
2.	25.04.2012	4,35,000.00
3.	07.05.2012	4,35,000.00

4.	01.06.2012	4,35,000.00
5.	30.06.2012	4,35,000.00
6.	31.07.2012	4,35,000.00
7.	15.09.2012	450000.00
8.	28.09.2012	175000.00
9.	31.10.2012	140000.00
10.	24.12.2012	420500.00
11.	24.12.2012	129500.00
	Total	3925000.00
12.	09.04.2013	20,00,000
13.	24.04.2013	5.00,000
14.	03.05.2013	6,00,000
	Total	70,25000.00

40. Further, in para-5.9, petitioner averred as under :-

“Also in compliance of order dated 04.04.2013 passed in Modification/Review Application for Extension of Time deposited Rs.15 lacs + 5 lacs = Rs.20 lacs on 09.04.2013 & Rs. 5 lacs (24.04.2013) and Rs.6 lacs (03.05.2013) total deposits is Rs.39.25 lacs + 31 lacs = 70.25 lacs.”

41. Pertinently, the Bank in its reply has not chosen to deny the

aforesaid factual averments. Thus, in view of the judgment of Supreme Court in *Naseem Bano (SMT) vs. State of U.P. and others* reported in **1993 Suppl. (4) SCC 46**, the facts pleaded but not denied by the respondent must be treated as admitted. Apart from the above, the RTI information given by the Bank on 07.01.2022 shows that petitioner had deposited Rs.70,33,605/-.

42. Thus, petitioner has admittedly deposited the amount of more than 70 lacs between 06.01.2012 to 31.03.2020. The DRAT by order dated 06.01.2012 and 28.02.2012 directed to deposit Rs.65 lacs with interest at reducing balance @ 10% per annum.

43. The petitioner admittedly deposited much more than the principal amount of Rs.65 lacs. About interest, no amount was quantified and informed by the Bank. In other words, petitioner's repeated request to inform about the remaining amount/interest went unreplied by the Bank. In this backdrop, the petitioner filed M.A. No.284/2014 before DRAT to direct the Bank to return the original title deed and issue 'No Dues Certificate'.

44. The DRAT dismissed the said M.A. by impugned judgment dated 27.09.2019. The DRAT considered that amount paid by the petitioner was not paid in 15 equal installments. In para-13 of the impugned judgment, it is recorded "*It is apparent from the above condition that the*

Bank was given liberty to proceed with the auction even on default of one installment.”

45. It is important to note that argument of Shri Amit Khatri repeatedly advanced during the course of hearing was that in the peculiar facts of instant case, there is no delay in making the payment of Rs.65,00,000/- by the petitioner. There is only an irregularity in not adhering to the procedure of payment of equal amount of installments which is not disputed by learned counsel for the Bank. The Bank, ultimately, received more than principal amount of Rs.65 lacs within 15 months.

46. Parties have not chosen to file their pleadings i.e. claim and reply filed before the learned DRAT on the basis of which the impugned judgment dated 27.9.2019 (Annexure P/1) was passed. However, a minute reading of the impugned judgment shows that parties were at loggerheads on the question of payment of original amount of Rs.65,00,000/- only. The stand of petitioner was not disbelieved by DRAT that the said amount was indeed paid but the Appellate Tribunal considered that financial discipline and schedule fixed by Appellate Tribunal was not followed by the petitioner in letter and spirit. The amount was although paid within time, but it was not paid in fifteen equal installments. Interestingly, there is no whisper in the entire judgment dated 27.9.2019 regarding non-payment of interest by the petitioner. The

Bank's defence is reproduced/reflected in the body of judgment but it does not show that the Bank claimed any such interest or expressed its grievance for non-payment of or less payment of interest.

47. Certainly, it was legitimate expectation of a borrower and litigant in a case of this nature where he had paid more than Rs. 65,00,000/- within stipulated time, showed his bonafides and expected that since over and above said amount of Rs. 65,00,000/- he paid more than Rs.5,00,000/- also, Bank will clarify as to whether said Rs.5,00,000/- satisfied the requirement of payment of interest. If not, what is the amount of unpaid interest and calculation thereof.

Since Bank did not mention about amount of interest before the Appellate Tribunal, in our view, Bank can claim interest only upto 27.9.2019 i.e. date of judgment of Appellate Tribunal. Thereafter, as taken note of, the Bank despite repeated request of the petitioner did not inform him about the remaining amount and interest. The principle about legitimate expectation was laid down by this Court in **Mohan Lal Patidar (supra)** (an SLP preferred against this order before the Supreme Court i.e. SLP No.8088-8089/2022 was dismissed by the Supreme Court on 13.5.2022). The principle of legitimate expectation is attracted in favour of petitioner inasmuch as he was entitled to get the correct information regarding unpaid amount and if he paid the entire amount, he

had a valuable legitimate expectation to get back the original deed/documents etc. If the Bank has not taken the objection regarding unpaid amount of interest before the DRAT in the impugned proceedings, it cannot be permitted to rise from its deep slumber now and fasten a huge interest for the period beyond/after the judgment of DRAT dated 27.8.1999 on the petition.

48. It is also noteworthy that by communication dated 12.12.2020 (Annexure P/13), the National Lok Adalat pursuant to information given by Bank informed the petitioner that he is only required to pay Rs.16,250/-. The notice is reproduced for ready perusal :-

“नेशनल लोक अदालत, दिनांक 12 / 12 / 2020

स्थान—जिला—न्यायालय—जबलपुर

सूचना पत्र (प्रीलिटिगेशन)

माननीय पीठासीन अधिकारी महोदय—लोक अदालत

जबलपुर—(म.प्र.)

लीगल सर्विसेस अथारिटी एक्ट 1987 की धारा 19 (5 एवं 20 के अंतर्गत सूचना पत्र)

आवेदक

बैंक ऑफ इंडिया

प्रकरण क्रं.—2020

जबलपुर शाखा

विरुद्ध

अनावेदक

SHUBHAM HOSPITAL AND RESEARCH

MADAN MAHAL CHOWK NAGPUR ROAD, JABALPUR M.P.

इस सूचना पत्र के द्वारा आपको सूचित किया जाता है की आपका मामला सुलह—समझाईश के आधार पर लोक—अदालत में निराकृत किया जाना प्रस्तावित है।

आप पर उक्त बैंक के ऋण की, वर्तमान में व्याज सहित रू. 32837.35/- धनराशि बकाया है। यदि आप लोक अदालत में राशि रू. 16250/- अदा करते हैं, तो आपका मामला पूर्ण रूप से निराकृत किया जा सकेगा और आप व्याज सहित पूर्ण बकाया राशि देने के ऋण से मुक्त हो जायेंगे।

लोक अदालत में मिलने वाली छूट का लाभ लेने हेतु दिनांक 12/12/2020 को जिला- न्यायालय, जबलपुर में मामले के निराकरण हेतु समझौता राशि रू. 16250/- लेकर उपस्थित रहें] ;k yksd vnkyr dh firfFk ls iwoZ 'kk[kk esa laidZ djsaA

डिफाल्टरऋण खाते में मांग राशि	लेक अदालत अंतर्गत दी गयी छूट की राशि	निराकरण हेतु जमा की जाने वाली समझौता राशि
32837.35/-	16587.35/-	16250/-

खाता क्र. 940065201190049

Asset Code : 33

(देवदत्त)

नवम व्यवहार न्यायाधीश वर्ग-1

स्थान: जबलपुर

This notice is withdrawn
by Bank for Other reasons

जबलपुर (म.प्र.)

पीठासीन अधिकारी

नेशनल लोक अदालत

दिनांक :03/12/2020

जिला- जबलपुर (म.प्र.)”

49. Learned counsel for the respondent has not given any justifiable explanation for cancelling/withdrawing the notice of Lok Adalat.

50. In view of foregoing analysis, it is clear that in obedience of DRAT's direction, the petitioner had deposited more than Rs.65 lacs within 15 months although not deposited in 15 equal installments. In our view, the purpose of fixing 15 equal installments by the DRAT was to ensure that amount of Rs.65 lacs is paid with proper convenience to the petitioner within 15 months. What was material and essential was the repayment of amount and not the number of installments. Since, petitioner has repaid the principal amount of Rs.65 lacs within time, non-

payment of the same in equal installments or any irregularity of that nature will not bestow any right to the Bank to auction the property. The learned DRAT in its impugned judgment dated 27.09.2019 to this extent has taken a hyper-technical view.

51. Supreme Court in the case of **Aurangabad Electricals (P) Ltd. vs. CCE Customs, (2011) 1 SCC 121** in para-14, has held thus :-

“Technicalities should not defeat rendering of complete justice to a litigant.”

52. Supreme Court in the case of **Kulwant Kaur v. Gurdial Singh Man (2001) 4 SCC 262** in para-33, has also held as under :-

“Technicality alone by itself ought to permit the High Court to decide the issue since justice-oriented approach is the call of the day presently.”

53. It is apposite to quote relevant paragraphs of judgment of Apex Court in the case of **P.Vijayakumari (supra)** on which heavy reliance is placed by the petitioner. The relevant paras are reads as under :-

“3. In the Lok Adalat held on 10/09/2004, the parties had agreed on an amount of Rs.34.5 lakhs payable within three months. The appellants defaulted and paid a sum of Rs. 3 lakhs on 08/02/2005 and a further sum of Rs.35 lakhs on 17/10/2006 in terms of a conditional order passed by DRAT staying the sale/auction of the mortgaged property. Finally, on 29/10/2006, a further payment of Rs.3 lakhs was made. In the above manner, a sum of Rs.41

lakhs stood paid by the appellants to the respondent Bank as on 29/10/2006.

5. By order dated 07/12/2017 which is in the terms extracted below, we had directed as follows :

“Having heard the learned counsel for the parties we direct the appellants to indicate to us the amount which the appellants would be in a position to offer to finally close the matter. The respondent Indian Bank will also indicate the amount that the Bank expects to be offered. The said decision of the Bank will be taken at the appropriate level and will be placed before the Court in a sealed cover.”

7. **The respondent Bank has not come up with any concrete offer** and has placed before the Court an extract of the statement of account of the appellants as on date which goes to show that the total dues as per the Bank's statement of account is Rs.8,17,65,148 (Rupees eight crore seventeen lakhs sixty-five thousand one hundred forty-eight only).

8. We have considered that matter. **There was undoubtedly some delay in payment of the amount due as per the terms of the settlement reached in the Lok Adalat. It was also agreed by and between the parties that if the terms of payment including the time schedule of payment is not adhered to, the respondent Bank will be at liberty to recover the entire amount due. DRAT in the impugned order had considered the matter and had taken the view that even on the face of express terms between the parties that the bank would have a right to recover the full amount due in the event of default on the part of the appellants, the same was not the only course of action or the sole option and that on**

the grounds shown for the delay the same is liable to be understood in favour of the borrower. Accordingly, the matter was closed. In the writ petition filed by the Bank the position was reversed.

9. In the facts of the present case, the view taken by the learned Appellate Tribunal (DRAT), as noted above, cannot be said to be so wholly unreasonable or unsustainable so as to justify interference by the High Court. **If the agreed amount stood paid though with some delay, condonation of the delay is a possible course of action, if the grounds for delay justified a departure from what was also agreed upon i.e. the right of a Bank to recover the entire dues.** All would depend on the facts of each case. Having regard to the totality of the facts of the present case, we are of the view that **the ends of justice would be met** if for the delay that had occurred, the appellants are made liable to pay simple interest @ 24% p.a. on the amount of Rs.34.5 lakhs (as agreed to in the Lok Adalat) for the period from the date of the award of Lok Adalat i.e. 10/09/2004 to the date of last payment i.e. 29/10/2006. In addition, a further amount of Rs. 10 lakhs to be paid by the appellants to the respondent Bank as compensation and costs.

10. The above amounts will be paid by the appellants to the respondent Bank within a period of 45 days from today failing which the respondent Bank may understand the present order to be recalled and the mortgaged property to be open for auction/disposal in accordance with law.”

54. We find substantial force in the argument of learned counsel for the petitioner that present case has glaring similarity to great extent with that of P. Vijayakumari (supra). In the case before Apex Court in **P. Vijayakumari (supra)**, the parties agreed on an amount of Rs.34.5 lakhs payable within three months before Lok Adalat. The appellant defaulted and could not pay the entire amount within stipulated time. The appellants therein made certain payment in installments. In total, a sum of Rs.41 lacs was paid by the appellants to the respondent/Bank as on 29/10/2006. The appellants approached the DRT and sought extension of time for payment and condonation of delay as per the order of Lok Adalat. The DRT dismissed the application but its decision was reversed in appeal by DRAT. The DRAT's order was questioned by the Bank in a Writ Petition before the High Court. The Writ Petition was allowed by the High Court which became subject matter of challenge and adjudication before Apex Court in **P. Vijayakumari (supra)**.

55. The Apex Court noted that admittedly there was some delay in payment of amount as per terms of settlement reached in the Lok Adalat. However, fact remains that the original amount was paid with some delay by the appellants therein. In a case of this nature, the Apex Court opined that the DRAT had taken a view that even on the face of express terms between the parties that the Bank had a right to recover the full amount

due in the event of default on the part of the appellants, the said course was not the only option with the Bank. The grounds of delay shown by the borrower must be considered. The Apex Court further opined that if the agreed amount stood paid though with some delay, *condonation of delay is a permissible course of action*. If grounds for delay justified a departure from what was also agreed upon i.e. the right of a Bank to recover the entire dues.

56. No doubt, in the aforesaid judgment, the Apex Court made it clear that it depends on the facts of each case but if the facts of present case are also examined, at the cost of repetition, in our considered opinion, the petitioner without their being any delay deposited more than the principle amount of Rs.65 lacks as per directions of DRAT. The entire amount of interest despite willingness and intention of petitioner could not be deposited for the reason attributable to the non response of Bank also.

57. It is pertinent to mention here that for the first time by communication dated 12.12.2020 and by an application dated 3.9.2021, the Bank informed that petitioner had to pay a small amount of Rs.16,250/- as against the main loan and an amount of interest for which no basis/calculation was furnished.

58. The parties fought a series of litigation in various courts including before D.R.T., D.R.A.T. and this court. Once the orders dated 6.1.2012

and 28.2.2012 were passed which attained finality, it was expected that the parties will adhere to the terms and conditions so that unnecessary litigation comes to an end. The petitioner deposited much more than the amount of Rs.65 lacs within the stipulated time but account was not closed and his original documents were not returned by the bank perhaps under the impression that the petitioner was required to pay further interest.

59. In order to finally draw the curtains on this litigation, we deem it proper to invoke our power *to do complete justice* between the parties flowing from Article 226 of the Constitution.

60. In **(1965) 3 SCR, 536 (Dwarka Nath Vs. ITO)**, the Apex Court held that Article 226 of the Constitution is couched in comprehensive phraseology and confers a wide power on the High Court to reach injustice wherever it is found. The scope of writ jurisdiction in India is wider than the writ jurisdiction available to country like England functioning with a unitary form of Government.

61. In **(1995) 6 SCC 749 (B.C. Chaturvedi Vs. Union of India)**, **Justice B.L. Hansaria** in his concurring judgment opined that High Court has power to do “complete justice”. As per Article 142 of the Constitution, the Apex Court was conferred with the power of doing

complete justice that does not mean that other courts are not to do complete justice between the parties.

62. In **B.C. Chaturvedi Vs. Union of India, (supra)**, it was further held as under:-

*“23. It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice,
Absence of provision like Article 142 is not material. according to me. This may be illustrated by pointing out that despite there being no provision in the Constitution parallel to Article 137 conferring power of review on the High Court, this Court held as early as 1961 in Shivdeo Singh case [Shivdeo Singh v. State of Punjab, AIR 1963 SC 1909] that the High Courts too can exercise power of review, which inheres in every court of plenary jurisdiction. I would say that power to do complete justice also inheres in every court, not to speak of a court of plenary jurisdiction like a High Court. Of course, this power is not as wide as which this Court has under Article 142. That, however, is a different matter.”*

63. The Judgment of **Dwarka Nath Vs. ITO (supra)** was again followed by the Supreme Court in **(2000) 8 SCC 395 (Badrinath Vs. Govt. of T.N.)**.

64. A five Judges Bench of Supreme Court in **(2004) 8 SCC 788, (M.P. Special Police Establishment Vs. State of M.P.)** has held as under:-

“31.the writ court while exercising its jurisdiction under Article 226 of the Constitution as also this Court under Articles 136 and 142 of the Constitution can pass an appropriate order which would do complete justice to the parties.”

65. The aforesaid legal journey leaves no room for any doubt that Article 226 of the Constitution gives wide powers to this court to reach injustice wherever it is found. For this purpose, the High can mould the reliefs to meet the peculiar and extraordinary circumstances of the peculiar case (see also **(2010) 3 SCC 571, (State of W.B. Vs. Committee for Protection of Democratic Rights)**). This view is consistently followed by the Supreme Court in various judgments including **(2013) 14 SCC 737 (Bangalore Development Authority Vs. Vijaya Leasing Ltd.)**. This Court in **(2016) 1 M.P. LJ 474 (Little Angels Shiksha Samiti Vs. State of M.P.)** has followed the aforesaid *ratio decidendi*.

66. In order to curtail and minimize unnecessary litigation and heart burning, in the peculiar facts of this case, we deem it proper to exercise the powers to do complete justice and pass appropriate orders so that litigation comes to an end and parties can get an opportunity to settle their dispute.

67. We, therefore, deem it proper to follow the course adopted by the Supreme Court in the case of **P. Vijayakumari and another Vs. Indian**

Bank (supra). We are of the view that ends of justice would be met if we hold and direct that :-

- (i) Principle amount of Rs.65 lacs stood paid by the petitioner within stipulated time as per order of DRAT, dated 6.1.2012, r/w order dated 28.2.2012.
- (ii) In the order dated 28.2.2012, the bank was permitted to charge the interest on the reducing balance of Rs.65 lacs @ 10% per annum. It will not be proper for us to re-write or re-fix the percentage of interest because the order dated 28.2.2012 has attained finality.
- (iii) Accordingly, the bank shall furnish the information and basis of calculation of 10% per annum interest on reducing balance of Rs.65 lacs to the petitioner till the date of impugned judgment of DRAT dated 27.9.2019 within fifteen days from the date of production of copy of this order.
- (iv) In turn, the petitioner shall pay the said amount of interest to the bank within sixty days from the date information regarding interest is furnished to the petitioner.
- (v) If aforesaid amount of interest is not paid by the petitioner to the bank within sixty days aforesaid, this order shall be treated as recalled/cancelled and it will be open to the bank to auction the mortgaged property in accordance with law.
- (vi) The impugned judgment dated 27.09.2019 passed in M.A. No.284/2014 is set aside.

68. The aforesaid directions, in our judgment, will take care of interest of both the sides and will do complete justice between the parties.

69. In view of foregoing analysis and the wholesome exercise undertaken by us to do complete justice between the parties, in the *peculiar facts of this case*, it will not be proper to dismiss the petition on the second objection of maintainability taken by the Bank. If petitioner fulfills the conditions mentioned in para-67 clause (i) to (vi) within the stipulated time, the account of petitioner shall be treated to be settled for all purposes and it will have an effect of closure of execution proceedings and recovery proceedings pending before DRT. However, if petitioner fails to comply with conditions mentioned in (i) to (vi) aforesaid within the time fixed, the Bank and DRT will be at liberty to proceed against the petitioner in accordance with law. In other words, failure to comply with conditions mentioned in para-67 above, this order shall be treated to be cancelled.

70. The petition is **disposed off**.

(SUJOY PAUL)
JUDGE

(PRAKASH CHANDRA GUPTA)
JUDGE