

Power of DRT to direct bank for settlement with borrower: DRAT KOLKATA

State Bank of India

...Appellant

Ace Graphics Trade Private

...Respondent

Case No: Appeal No. 73 of 2023

Date of Judgement: 7th August, 2023

Judges:

Anil Kumar Srivastava, J – Chairperson

For Appellant: Mr. Swarup Banerjee, Advocate.

For Respondent: Mr. D.K. Sengupta, Advocate.

Facts:

The appeal has arisen against an order passed in SA No. 409 of 2022 filed by M/s Ace Graphics Trade Pvt. Ltd against State Bank of India. The DRT issued directions to file a fresh settlement proposal as per terms fixed by DRT. It also restrained the bank from taking any coercive action. The SARFAESI application was filed before DRT-III Kolkata. An application was made to restrain the bank from giving effect to the possession notice dated 19.07.2018. During hearings, some settlement was offered by respondent which was initially accepted but later cancelled by the bank via letter dated 16.02.2022. Out of alleged settlement amount of Rs 36 lacs, only Rs 8 lacs was deposited. Thereafter, DRT issued impugned directions for fresh settlement proposal and interim order restraining coercive action by bank.

Elaborate Opinion of the Tribunal:

The Tribunal referred to the judgement of Supreme Court in Bijnor Urban Cooperative Bank Ltd v. Meenal Agarwal which held that no writ of mandamus can be issued directing a financial institution/bank to positively grant benefit of OTS to a borrower. Grant of OTS benefit is subject to eligibility criteria. If the bank is of opinion that entire loan amount can be recovered by selling mortgaged/secured property, it would be justified in refusing OTS. This commercial decision should be left to the bank. The Tribunal held that DRT cannot direct bank to settle matter on terms fixed by it. This exceeds DRT's jurisdiction, as held by Supreme Court in Bijnor Urban Cooperative Bank case. Accordingly, the interim order restraining coercive action also could not sustain. The impugned order deserves to be set aside.

Arguments by Bank:

Out of alleged settlement amount of Rs 36 lacs, only Rs 8 lacs was deposited by respondent. Hence, settlement offer was rightly refused. DRT has no jurisdiction to direct bank to settle matter on terms fixed by it. This infringes on bank's commercial wisdom to settle disputes. Hence impugned order deserves to be set aside.

Arguments by Borrower:

Borrower had offered some settlement which was initially accepted by bank. Hence, bank should be directed to settle the dispute.

Sections and Laws Referred:

Section 17 of SARFAESI Act

Article 226 of Constitution of India

Judgement in Bijnor Urban Cooperative Bank Ltd v. Meenal Agarwal – Civil Appeal No. 7411 of 2021

Cases Cited:

Bijnor Urban Cooperative Bank Limited v. Meenal Agarwal & Ors. – Civil Appeal No. 7411 of 2021

Order:

Appeal allowed. Impugned order dated 18.05.2022 passed by DRT-3 Kolkata set aside. No order as to costs.

Full Text of Judgment:

1. Instant Appeal has arisen against an order dated 18.05.2021 passed in S.A. No. 409 of 2022 M/s Ace Graphics Trade Pvt. Ltd. Vs. State Bank of India and anr whereby direction was issued for settlement to the Bank and further an interim order from restraining the Bank from taking any coercive action till the disposal of SARFAESI application.

2. I have heard the Learned Counsel for the parties and perused the record. From the pleadings of the parties, it appears that the SARFAESI Application was filed before the Learned DRT III Kolkata. An application was filed restraining the Bank from giving effect to the possession notice dated 19.07.2018. During the course of hearing some submission was made for settlement of the dispute wherein some offer was given by the Respondent which was cancelled by the Bank vide letter dated 16.02.2022. It appears that out of the amount of Rs. 36 lacs allegedly settlement amount, only an amount of Rs. 8 lacs was deposited by the Respondent. Hence, the offer was refused. Thereafter, Learned DRT issued directions for filing fresh proposal with terms and conditions fixed by the DRT and further an interim order restraining the Bank from taking coercive steps.

3. It is settled legal proposition as has been held by the Hon'ble Apex Court in the case of "The Bijnor Urban Cooperative Bank Limited, and others Vs. Meenal Agarwal & others Civil Appeal No. 7411 of 2021 decided on 15th December, 2021."

"11. The sum and substance of the aforesaid discussion would be that no writ of mandamus can be issued by the High Court in exercise of powers under Article 226 of the Constitution of India, directing a financial institution/ bank to positively grant the benefit of OTS to a borrower. The grant of benefit under the OTS is always subject to the eligibility criteria mentioned under the OTS Scheme and the guidelines issued from time to time. If the bank/ financial institution is of the opinion that the loanee has the capacity to make the payment and/or that the Bank/ financial institution is able to recover the entire loan amount even by auctioning the mortgaged

property/ secured property, either from the loanee and/ or guarantor, the bank would be justified in refusing to grant the benefit under the OTS Scheme. Ultimately, such a decision should be left to the commercial wisdom of the Bank whose amount is involved and it is always to be presumed that the financial institution/ bank shall take a prudent decision whether to grant the benefit or not under the OTS Scheme, having regard to the public interest involved and having regard to the factors which are narrated hereinabove.

12. In view of the aforesaid discussion and for the reasons stated above, we rea of the firm opinion that the High Court, in the present case, has materially erred and has exceeded in its jurisdiction in issuing a writ of mandamus in exercise of its powers under Article 226 of the Constitution of India by directing the appellant Bank to positively consider/grant the benefit of OTS to the original writ petitioner. The impugned judgment and order passed by the High Court is hence unsustainable and deserves to be quashed and set aside and is accordingly quashed and set aside.”

4. A direction could not be issued by the DRT settling the terms and conditions for settlement by the Bank. In the present matter, the Ld. DRT exceeds its jurisdiction by settling the terms and conditions for settlement of the matter which was against law as has been held by the Hon'ble Apex Court in the case of Bijnor Urban Cooperative Bank Limited (supra).

5. Accordingly, further direction for injunction restraining the Bank from taking any coercive steps could also not sustain. Accordingly, the impugned order deserves to be set aside. Appeal is liable to be allowed.

Appeal is allowed. Impugned order dated 18.05.2022 passed by Ld. DRT-3 Kolkata is set aside. No Order as to costs. File be consigned to Record Room. Copy of the order be supplied to Appellant and the Respondents and a copy be also forwarded to the concerned DRT. Copy of the Judgment/ Final Order be uploaded in the Tribunal's Website. Order signed and pronounced by me in the open Court on this the 7th day of August, 2023.