

IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA

(Appeal No. 73 of 2023)
(Arising out of S.A. No. 409 of 2022 in DRT –3 Kolkata)

**THE HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA
CHAIRPERSON**

1. State Bank of India Stressed Assets Recovery Branch 3rd Floor, 2/1, Russell Street, Kolkata -700071.
2. The Authorised Officer, Stressed Assets Recovery Branch 3rd Floor, 2/1, Russell Street, Kolkata -700071.

...Appellants

-Versus-

1. Ace Graphics Trade Private Limited, Premises No. 2, Benia Pukur Lane, P.S. Beniapukur, Kolkata -700014
2. Murad S. Mahmood alias Syed Murad Mahmood, Premises No. 2, Benia Pukur Lane, P.S. Beniapukur, Kolkata -700014
3. Musamat Yasmeen Ahmed Murad, Premises No. 2, Benia Pukur Lane, P.S. Beniapukur, Kolkata -700014

... Respondent

Counsel for the Appellants

Mr. Swarup Banerjee,
Learned Counsel Mr. H.C.
Yadav, Learned Counsel
for the Appellant.

Counsel for Respondent

Mr. D.K. Sengupta,
Learned Counsel Ms.
Sweta Saha, Learned
Counsel for the
Respondent

JUDGMENT : On 7th August, 2023

THE APPELLATE TRIBUNAL :

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.

ORDER

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.

(Anil Kumar Srivastava,J)
Chairperson

Dated: 7th August, 2023
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