

**BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI**

Present: Mr Justice Ashok Menon, Chairperson

Appeal No. 85/2012

Between

M/s Amit Enterprises & Anr.

... Appellant/s

V/s.

Canara Bank & Ors.

... Respondent/s

Mr Ajay D.T., Advocate for Appellants.

-. Order dated: 20/07/2023:-

The 1st Appellant is the proprietary concern of Shri Amit Yeshwanthrao Kadam and the 2nd Appellant is the mortgagor. This is an appeal filed under section 20 of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 ('RDDB & FI Act', for short) challenging the judgment and order in Original Application (O.A.) No. 87 of 2009 on the files of the Debts Recovery Tribunal, Pune (D.R.T.)

2. The 1st Respondent Canara Bank had advanced a cash credit facility of ₹7 lakhs to the 1st Appellant vide sanction letter dated 16/03/2004. On disbursement of the debt, demand promissory note and other documents were executed. The Respondents Nos. 2 to 4 stood as guarantors while the 2nd Appellant stood as guarantor and also mortgaged plot No. 49 half part of the western side, in grama panchayat property No.2280/2 out of survey No. 384/1 of village Karanje Tarf Satara. The Appellants defaulted payment. Thereafter, the debt was acknowledged on 22/08/2006. The bank issued a recall

notice on 04/04/2007. The Appellants failed to pay the amount and hence the 1st Respondent bank filed the aforesaid O.A. before the D.R.T. against the Appellants and Respondents 2 to 3 as defendants.

3. The 1st Appellant appeared and filed a written statement challenging the authority of the person who had signed the application and also the jurisdiction of the D.R.T. to entertain the O.A. stating that the amount due was less than ₹10 lakhs. The rate of interest as also the claim of penal interest charged were disputed. The letter of acknowledgement is also not admitted. Likewise, the other defendants also challenged the claim in the O.A. disputing the execution of the letter of acknowledgement and stating that the cash credit facility was increased behind their backs. The contentions raised by the 1st Appellant were reiterated in the written statements filed by the rest of the defendants.

4. On the basis of the affidavits filed by the parties and on perusal of records, the Ld. Presiding Officer found the claim valid and proved. A Recovery Certificate was issued for an amount of ₹13,18,674.25 together with interest at the rate of 12% per annum with effect from the date of application till realisation and with a charge over the hypothecated/mortgaged property referred to above. The defendants had moved an application for a one-time settlement (OTS) which was not granted by the bank. The Appellants/Defendants wanted the Tribunal to find favour with the OTS proposal and decree accordingly. The Ld. Presiding Officer, however, found that the Applicant/1st Respondent cannot be directed to reconsider the OTS proposal which was rejected and hence decreed the O.A.

5. The Appellants are aggrieved and hence this appeal.
6. The Respondents did not appear despite being served with notice, and were, therefore, set ex parte. The Ld. Counsel for the Appellants was heard. Available records perused.
7. The Appellants contend that they are entitled to the benefit of settlement on the basis of this OTS proposal which was offered by the 1st Appellant through his counsel vide letter dated 18/09/2009. An offer was made to settle the debt for an amount of ₹7.50 lakhs in instalments with an upfront payment of ₹62,500/-. A request was also made to withdraw the criminal case filed by the bank against the 1st Appellant under section 138 of the Negotiable Instruments Act. The 1st Appellant had once again reiterated the OTS proposal vide letter dated 30/11/2009.
8. The Ld. Counsel for the Appellants fervently argues that the Appellants are entitled to the benefit of the OTS proposal in accordance with the RBI guidelines. He also relies on the decision of the Hon'ble Supreme Court in *M/s Sardar Associates & Ors. vs. Punjab and Sindh Bank & Ors* AIR 2010 SC 218 to argue for the proposition that the 1st Respondent bank is a 'State' within the meaning of article 12 of the Constitution of India apart from the fact that it is bound to follow the guidelines issued by the Reserve Bank of India. The Ld. Counsel submits that though the later decision of the Hon'ble Supreme Court in *State Bank of India vs. Arvada Electronics Ltd. Civil Appeal No. 6954 of 2022* holds a different view, the later judgment does not have a retrospective effect and hence, it is not applicable to the

present case.

9. The only question that arises for consideration in this appeal is whether, in the facts and circumstances of the present case, The D.R.T. was justified in not allowing the Appellants to perform in accordance with the OTS proposal submitted by them.

10. In the decision of the Hon'ble Apex Court in *Sardar Associates* (supra) it was found that the bank deviated from the guidelines issued by the Reserve Bank of India and therefore the Hon'ble Apex Court held that The RBI guidelines are binding on the bank and that the bank shall deal with the case of the borrower under the RBI guidelines on OTS.

11. In the present case, an OTS proposal was offered by the 1st Appellant through his counsel vide letter dated 18/09/2009 to settle the debt for an amount of ₹7.50 lakhs in instalments with an upfront payment of ₹62,500/-.

12. In *Bijnor Urban Co-operative Bank Ltd., Bijnor & Ors. vs. Meenal Agarwal & Ors* (2021) SCC OnLine SC 1255 it is observed by the Hon'ble Supreme Court that the grant of benefit of the OTS scheme cannot be claimed as a matter of right and shall always be subject to fulfilling the eligibility criteria mentioned in the scheme. The Hon'ble Apex Court has upheld the decision in *Meenal Agarwal's* case and held that the borrower is not entitled to claim that the bank is bound by the OTS scheme.

13. In *Sardar Associates* the Hon'ble Supreme Court was considering the sanctity of RBI guidelines pertaining to OTS. There is no particular RBI guideline relied upon by the Appellants Seeking benefit

thereunder.

Hence, I find no reason to interfere with the findings of the Ld. Presiding Officer. The appeal has no merits and hence requires to be dismissed.

Sd/-
Chairperson

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DRAFT MUMBAI