

Mr Balkishan Boob Vs. Bank Of Maharashtra

Mr Balkishan Boob Vs. Bank Of Maharashtra

SooperKanoon Citation : sooperkanoon.com/1233291

Court : Karnataka

Decided On : Feb-25-2021

Judge : P.S.DINESH KUMAR

Appeal No. : WP 1267/2021

Appellant : Mr Balkishan Boob

Respondent : Bank Of Maharashtra

Judgement :

W .P N o .1 2 6 7 / 2 0 2 1 1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE25H DAY OF FEBRUARY, 2021 R BEFORE THE HONBLE MR. JUSTICE P.S. DINESH KUMAR WRIT PETITION No.1267 OF2021(GM-RES) BETWEEN : MR. BALKISHAN BOOB S/O LATE JAIKISHAN BOOB AGED ABOUT69YEARS RESIDING AT NO.1162 PHOENIX ONE BANGALORE WEST NO.1, DR. RAJKUMAR ROAD RAJAJINAGAR BENGALURU-560 010 PETITIONER (BY SHRI. DHYAN CHINNAPPA, SENIOR ADVOCATE FOR SHRI. ANAND MUTTALLI, ADVOCATE) AND : BANK OF MAHARASHTRA BANGALORE ZONAL OFFICE NO.15, POLICE STATION ROAD BASAVANAGUDI BENGALURU-560 004 REPRESENTED BY ITS CHIEF MANAGER AND AUTHORIZED OFFICER MR. SRINIVAS SAJJAN RESPONDENT (BY SHRI. D.S. RAMACHANDRA REDDY FOR SHRI. K. PRAKASHA HEGDE, ADVOCATES) THIS WRIT PETITION IS FILED UNDER ARTICLE226OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE RESPONDENT TO CONSIDER THE ONE TIME SETTLEMENT OFFER OF THE PETITIONER IN W .P N o .1 2 6 7 / 2 0 2 1 2 TERMS OF THE MAHA RAHAT YOJANA202021 AND MAHA SAMADHAN YOJANA202021 DATED2905.2020 ANNEXURE-L AS PER THE REPRESENTATION DATED1601.2021 ANNEXURE-S. THIS WRIT PETITION, HAVING BEEN HEARD AND RESERVED FOR

ORDER

S ON2302.2021, COMING ON FOR PRONOUNCEMENT OF

ORDER

S THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:-

ORDER

Heard Shri. Dhyan Chinnappa, learned Senior Advocate for petitioner and Shri. D.S. Ramachandra Reddy, learned Advocate for respondent.

2. M/s. Bhagwan Cotton Ginners Pvt. Ltd., has borrowed money from Bank of Maharashtra during 2014. Bank has initiated recovery proceedings. Property mortgaged to the Bank has been brought to auction. The owner of the mortgaged property has presented this writ petition with a prayer inter alia to direct respondent - Bank to consider petitioner's OTS offer made in his representation dated January 16, 2021 in terms of 'Maha Rahat Yojana 2020-21' and 'Maha Samadhan Yojna 2020-21'.

3. Shri. Dhyan Chinnappa submitted that petitioner has submitted his representation on January 16, 2021 W .P N o .1 2 6 7 / 2 0 2 1 3 (Annexure-S) with an offer to pay `4.4 Crores under the OTS Scheme. Since Bank has not considered the OTS proposal, petitioner has presented this writ petition. He submitted that the new OTS Scheme is non-discriminatory and non-discretionary in nature. As per the scheme, borrower's NPA account falls under the category 'Doubtful- III' which requires payment of 70% of the secured portion and 35% of the unsecured portion of the loan. Bank is duty bound to consider the OTS proposal. On January 27, 2021, this Court has directed petitioner to deposit Rs.One Crore in two installments on or before February 3, 2021. Petitioner has paid the said amount and submitted another representation to the Bank on February 2, 2021 to consider OTS for `5.05 Crores. However, the Bank has rejected the said offer on February 3, 2021. Petitioner has filed an application to amend the writ petition.

4. Petition is opposed by the Bank. Shri. D.S. Ramachandra Reddy, learned Advocate for the Bank submitted that the Company has borrowed `1.87 W .P N o .1 2 6 7 / 2 0 2 1 4 Crores on August 30, 2014 and `8 Crores on September 30, 2014. Industrial Plot measuring 2 acres 9 guntas situated in the Industrial area, Hyderabad Road, Raichur has been mortgaged to the Bank. On December 21, 2016, both accounts were clubbed and declared as 'NPA'. Bank initiated recovery proceedings and a 'Possession Notice' was issued by the Bank. The Company challenged the Possession Notice by filing an application under Section 17(1) of the SARFAESI Act, 2002 and it has been dismissed by the DRT vide order dated November 18, 2019. The said order has attained finality.

5. On December 24, 2018, Bank offered 'One Time Settlement' as per the ledger balance of `8.57 Crores and offered to receive `6.05 Crores before February 28, 2019. Borrower has paid 10% deposit amount and did not pay the balance.

6. On March 25, 2019, petitioner gave a representation for extension of OTS and the Bank rejected it on the same day and called upon petitioner to deposit the W .P N o .1 2 6 7 / 2 0 2 1 5 balance amount of `5.44 Crores on or before March 31, 2019.

7. The Company has filed Writ Petition No.201729/2019 before Kalaburagi Bench of this Court and the same has been dismissed. The Company has filed writ appeal thereon in W.A. No.200064/2019 and the same is pending.

8. In the meanwhile, time to pay under the scheme was extended till June 30, 2019, but neither the Company nor the petitioner have paid any money.

9. On August 20, 2019, Bank again offered another OTS under 'Maha-Riyayat 2019-2020' and called upon the Company to pay `5.64 Crores based on the ledger balance of `7.97 Crores. The amount was required to be paid on or before September 30, 2019. Petitioner did not avail this offer also. The time was again extended till March 31, 2020. Yet, neither did the Company nor the petitioner pay any money. W .P N o .1 2 6 7 / 2 0 2 1 6

10. Bank brought the property for sale by issuing 'Sale notice' on December 19, 2020. The auction was scheduled on January 28, 2021. The Company again submitted a representation on January 16, 2021 offering to pay `4.40 Crores under the aforementioned 'Maha Samadhan Yojana 2020-21' OTS Scheme. Bank has rejected the said offer. It has taken possession of the property. Petitioner after obtaining an interim order from this Court has submitted another OTS proposal for `5.05 Crores on February 2, 2021 and it has also been rejected.

11. Shri. Reddy further submitted that the amount due and payable by the Company as on date is `14.50 Crores. Petitioner owns properties worth more than 50 Crores in Bengaluru and Raichur. With these submissions, Shri. Reddy prayed for dismissal of this writ petition.

12. I have carefully considered rival contentions and perused the records. W .P N o .1 2 6 7 / 2 0 2 1 7 13. The principal argument of Shri. Dhyan Chinnappa is that the OTS scheme is non-discriminatory and non-discretionary. Once the Scheme is in place, a borrower or guarantor is entitled to the benefit of the Scheme.

Bank has rejected the OTS offers made by both Company and petitioner without proper application of mind.

14. Shri. Reddy has adverted to various documents filed along with the Statement of objections. Annexure-R1 is a Memorandum of documents for sanctioning loan of `1,87,50,000/-, Annexure-R2 is the Memorandum of documents for sanction of `8 Crores to M/s. Bhagwan Cotton Ginners Pvt. Ltd. Following persons are described as Directors/borrowers and guarantors in the said Memoranda:

1. Shri. Ramnivas Boob 2. Shri. Balkishan Boob 3. Shri. Vinod Kumar Boob 4. Shri. Vishal Kumar Boob 5. Shri. Vikas Kumar Boob 15. Thus, borrower is a family owned Private Limited Company. The accounts have been clubbed and declared as W .P N o .1 2 6 7 / 2 0 2 1 8 NPA in 2016. Petitioner, Shri. Balkishan Boob has been corresponding with the Bank. He has appended communications marked as Annexures - A, B, E, J, K, L, N & S to this writ petition. It is interesting to note that every communication from 2018 till 2021 is sent in the letter head of M/s. Bhagwan Cotton Ginners Pvt. Ltd., and signed by the petitioner describing him as guarantor/mortgager. He has also sent emails to the Bank. A portion of the email produced as Annexure-Q at page 57 of the writ petition is disturbing and it reads as follows:

"From:Balkishan boob [mailto:bkboob123@gmail.com]. Sent:Thursday, December 03, 2020 2:20 PM To: ED Y N RAO; zmbengaluru@mahabank.co.in Cc:bom1934_arbban@mahabank.co.in Subject:OTS accounts Bhagwan cotton ginners pvt ltd., Raichur Good morning, sir I am Balkishan boob of Bhagwan cotton ginners pvt ltd Raichur and I spoke to ZM madam yesterday and she asked me to talk to rajeshwari madam legal and spoke to her and briefed her what happened in our discussion today with ZM and also meeting held on 19th nov. Bank was supposed to get the buyer as per the version of ZM and she said will talk to ZM madam and to you and get back to me but no response till now. My sincere request is I can try to get the buyer by doing OTS with me at the price what I said during the discussion for which bank has to issue OTS expression of interest letter to me and also condition is that bank has to take possession of the property than only any buyer will buy from bank but the bank is going very slowly and not serious. W .P N o .1 2 6 7 / 2 0 2 1 9 As per my confidential information my brothers have managed in the magistrate office and kept the file in abeyance so bank has to act fast and if we do like this sir we may not be able to finalise fast and will not be possible for the bank to recover before march. So please think seriously and I will call after two days. I hope you will understand how serious I am to resolve and if necessary you feel you can reply or call me for discussion and finalisation anyhow I am doing my duty and let the bank decide. Now the ball is in banks court. Thanks and regards Balkishan boob mob 988020022 Mortgaged/guarantor" (Emphasis supplied) 16. In substance, though petitioner has sought to distance himself by stating in paragraph No.2 of the writ petition that he has ceased to be a Director on the Board of the Company since 2016, the tone and tenor of the letters and emails noted herein unambiguously establish that he is actively involved in the affairs of the Company and his brothers are involved in manipulating the Court proceedings. This conduct, without anything more, should entail dismissal of this writ petition in limine.

17. As recorded hereinabove, in 2018 the borrower has paid only 10% of the amount payable under 'Maha W .P N o .1 2 6 7 / 2 0 2 1 10 Riyayat OTS Scheme 2018-19' and failed to pay the balance amount but sought for extension of time. Again in 2019, borrower and the petitioner failed to pay the OTS amount under 'Maha Riyayat OTS Scheme 2019-20'.

18. Petitioner has again approached the Bank under 'Maha Riyayat Yojana Scheme 2020-21' and the same has been rejected.

19. Borrower - Company has filed a writ petition in Kalaburagi Bench of this Court. Upon its dismissal, Company has filed a writ appeal. Parallely, petitioner has filed this writ petition. Shri. Reddy urged that there is no reference to the writ petition and writ appeal filed by the Borrower - Company in this petition and thus petitioner has suppressed material facts. In reply, Shri. Dhyan Chinnappa submitted that this petition is filed by the guarantor and he is not a Director on the Board of the Company. But the records of the case clearly disclose that petitioner has been W .P N o .1 2 6 7 / 2 0 2 1 11 involved with the Company actively and the

severance from the Company is only namesake.

20. Thus, in substance, as and when a new OTS Scheme is announced, the borrower - Company and the petitioner have only given an impression that the account would be settled by availing OTS, but, in fact, have only procrastinated by indulging in correspondence and approaching the Courts.

21. Shri. Dhyan Chinnappa relied upon paragraphs No.6 and 34 in Sardar Associates and others Vs. Punjab and Sind Bank and Others¹ and argued that a right is created in a borrower based on the guidelines issued by the RBI and therefore, petitioner is entitled for grant of OTS.

22. Shri. Reddy relied upon paragraphs No.9, 11 and 16 in Authorized Officer, State Bank of Travancore and another Vs. Mathew K.C² and submitted that both borrower and guarantor have not repaid the debt in terms of the 1 (2009)8 SCC2572 AIR2018SC676W .P N o .1 2 6 7 / 2 0 2 1 12 'Maha-Riyayat OTS Schemes' for the year 2018-19, 2019- 2020 and 2020-2021. Therefore, Bank has rightly rejected the OTS proposal.

23. Though Shri. Dhyan Chinnappa has argued that a right has been created by virtue of the guidelines issued by the RBI and the Samadhan Schemes are non- discriminatory and non-discretionary in nature. He contended that OTS will have to be considered only on the ledger balance as on the date of NPA. If this contention is to be accepted, any borrower/guarantor may choose to repay at their sweet leisure several years after declaration of NPA. This is anti-thesis of economic progress. In financial market, money has to grow by the day. According to the Bank, the debt is `14.05 Crores as on date. Therefore, the contention with regard to ledger balance is noted only to be rejected.

24. It is rather strange that Banks lend money without proper tangible security and offer to receive a W .P N o .1 2 6 7 / 2 0 2 1 13 portion of it under the OTS Scheme. Logically, this is preposterous because, Banks deal with money belonging to the depositors. Waiver of portion of money lent by whatever name it is called, directly results in inflation and shall have adverse impact on the economic health of the Nation.

25. It was also urged by Shri. Dhyan Chinnappa that under the OTS Scheme, petitioner is liable to pay 70% on the secured portion and 35% on the unsecured portion. It is not understandable as to why a borrower is permitted to pay only 70% on the secured portion and the remaining 30% is waived. This means even when a security can realize more money, borrowers are absolved by paying only 70% value. Though this is a policy matter and not under challenge, it is appropriate for those concerned in the Ministry of Finance and RBI to have a re-look into the Scheme.

26. As recorded hereinabove, petitioner has been actively involved with the borrower. Company, as the W .P N o .1 2 6 7 / 2 0 2 1 14 borrower has filed writ petition in Kalaburagi Bench and petitioner as the Ex-Director and guarantor has filed this writ petition. Further, petitioner has suppressed material facts with regard to proceedings in Kalaburagi Bench. It is settled that relief under Article 226 is discretionary in nature and can be exercised only when a litigant approaches the Court with clean hands.

27. In view of the conduct of borrower - Company and the petitioner, the petitioner shall not be entitled for the equitable and discretionary relief under Article 226 of the Constitution of India. Though Bank has declared the account as NPA in 2016, the borrower and the guarantor have successfully stalled recovery of public money till date. Therefore, this petition is liable to be dismissed with costs.

28. In the result, the following:

ORDER

(a) Writ petition is dismissed. (b) Petitioner is directed to pay cost of `1,00,000/- (Rupees One Lakh) to the Bank and `1,00,000/-(Rupees W .P N o .1 2 6 7 / 2 0 2 1 15 One Lakh) in the name of Registrar General of this Court within four weeks from today.

29. In view of disposal of this petition, all pending interlocutory applications do not survive for consideration and the same stand disposed of. Sd/- JUDGE SPS

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com