The Regionalmanager, vs Bindu Vijayakumar

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Court : Kerala

Decided On : Nov-08-2022

Judge : Honourable the Chief Justice Mr.S.Manikumar,Honourable Mr. Justice Shaji P.Chaly

Appeal No. : WA/167/2022

Appellant : The Regionalmanager,

Respondent : Bindu Vijayakumar

Judgement :

W.A. No. 167/2022 :1:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR & THE HONOURABLE MR. JUSTICE SHAJI P.CHALY TH TUESDAY, THE 8 DAY OF NOVEMBER 2022 / 17TH KARTHIKA, 1944 WA NO. 167 OF 2022

JUDGMENT DATED 03.01.2022 IN WP(C) 19672/2021 OF HIGH COURT OF

KERALA APPELLANTS/RESPONDENTS:

1 THE REGIONAL MANAGER, STATE BANK OF INDIA, RAVI'S ARCADE, KOLLAM PIN 691 013. 2 THE CHIEF MANAGER STATE BANK OF INDIA, STRESSES ASSETS RECOVERY BRANCH (S.A.R.B) LMS COMPOUND, OPPOSITE MUSEUM WEST GATE, VIKAS BHAVAN (PO), THIRUVANANTHAPURAM PIN 695 033. 3 THE BRANCH MANAGER STATE BANK OF INDIA, PATHANAPURAM BRANCH, PATHANAPURAM BRANCH, KOLLAM PIN 689 695. BY ADV JAWAHAR JOSE

RESPONDENT/WRIT PETITIONER: BINDU VIJAYAKUMAR AGED 49 YEARS W/O. VIJAYAKUMAR, SIVASHYLAM, EDUKKADOM (PO) EZHIKONE, KOLLAM 691 505. BY ADV R.GOPAN THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 01.11.2022, THE COURT ON 08.11.2022 DELIVERED THE FOLLOWING: W.A. No. 167/2022 :2: S. MANIKUMAR, CJ & SHAJI P. CHALY, J. --- W.A. No. 167 of 2022 --- Dated this the 8th day of November, 2022.

JUDGMENT

SHAJI P. CHALY, J.

Respondents in W.P.(C) No. 19672 of 2021-officials of the

State Bank of India, have filed this appeal challenging the judgment

of the learned single Judge dated 03.01.2022 in W.P.(C) No. 19672 of 2021, whereby the writ petition was allowed and the respondent/writ petitioner was permitted to repay the balance amount due under the One Time Settlement Scheme sanctioned on 30.11.2021, outside the scheme period, but within the limited extended period.

2. Accordingly, the second appellant i.e., the Chief Manager, State Bank of India, Thiruvananthapuram, was directed to dispose of Exhibits P6 and P7 representations filed by the respondent/writ

petitioner in the light of the observations contained in the judgment

and grant a limited extension of time for repayment of the balance amount under the sanctioned OTS scheme after imposing a reasonable percentage of interest on the balance amount due from the writ petitioner from 30.07.2021 till the date of payment and also the period within which the said payment must be made by the W.A. No. 167/2022 :3: petitioner.

3. It was further directed to take a decision within a period of

10 days from the date of receipt of a copy of the judgment after granting an opportunity of being heard to the writ petitioner. It was further observed that if the amount fixed as directed above, is not paid within the time stipulated, the benefit of the judgment shall not enure to the writ petitioner. It is, thus, challenging the legality and correctness of the said judgment, this appeal is filed.

4. Brief material facts for the disposal of the writ appeal are as follows: The respondent/writ petitioner has availed an overdraft facility to the tune of Rs. 2,50,00,000/- during the year 2012 from the

State Bank of India, Pathanapuram Branch, Kollam District, appellant No.3, for conducting a business of building materials. Petitioner had mortgaged her landed properties having an extent of 24.91 Ares in various re-survey numbers and the residential building situated within the limits of the Kadampanad Panchayat, Adoor Taluk. Admittedly, repayment was defaulted and consequently, proceedings were initiated under the SARFAESI Act 2002 against the secured asset for realization of the outstanding dues.

5. Aggrieved by the same, the respondent/writ petitioner has W.A. No. 167/2022 :4:

filed W.P.(C) No. 286 of 2018 before this Court challenging the recovery proceedings and prayed for a reasonable time to pay off the outstanding loan amount. The said writ petition was disposed of as per Exhibit P1 judgment dated 30.01.2018 directing the writ petitioner to pay the outstanding loan amount with interest due in 10 equal monthly installments.

6. It is submitted that subsequent to the said judgment, she

met with a major accident and had to spend above Rs.35,00,000/- in various hospitals for the treatment, including bone marrow replacement along with Hysterectomy and Oophorectomy. It is also pointed out that in the end of 2019, family members were afflicted with covid and the writ petitioner was totally bed ridden which has aggravated her pre-existing ailment.

7. Matters being so, the writ petitioner has applied to settling

her accounts under the One Time Settlement Scheme. Accordingly, as per Exhibit P2 dated 20.10.2020, the second appellant i.e., Chief Manager, granted the benefit of One Time Settlement Scheme and the OTS amount was fixed at Rs. 1,07,81,341/-. As per the terms of settlement, the writ petitioner had to immediately deposit 5% of the OTS amount; thereafter, 10% of the OTS amount as a first

installment within 30 days; 10% of the OTS amount within a further period of 60 days; and the balance amount, within 8 months W.A. No. 167/2022 :5: from the date of sanction of the OTS.

8. The case of the petitioner is that she had paid the amount

as per clauses 3, 4 and 5 of Exhibit P2 scheme. It is also stated that from 30.09.2020 to 30.03.2021, the writ petitioner had paid an amount of Rs. 61,81,000/-, as is clear from Exhibit P3 statement of account of her overdraft facility. Admittedly, the balance amount was not paid and accordingly, Exhibit P4 notice was issued by the second appellant stating that the respondent/writ petitioner failed to remit Rs. 36,41,000/- before 30.07.2021 and hence, the OTS benefit accorded to her has become infructuous and treated as failed.

9. Consequently, on 16.08.2021, the second appellant issued

Exhibit P5 sale notice for the sale of the mortgaged properties on 24.09.2021 for the recovery of Rs.2,97,52,183/- against the amount of Rs.1,07,81,741/- due under the OTS scheme.

10. The further case of the respondent/writ petitioner is that she has already deposited Rs.61,81,000/- and as per the OTS

scheme, the remaining amount was only Rs.36,41,000/-. It is submitted that when the State Government declared the lock-down for two months from 08.05.2021 to 08.07.2021, the writ petitioner had no income during that period, and hence, she could not pay the amount as per the terms of the OTS scheme. Other contentions W.A. No. 167/2022 :6: were also raised in the writ petition, and the respondent/writ petitioner has sought for a reasonable time to settle the transaction in the OTS scheme offered to the writ petitioner.

11. The second appellant has filed a counter affidavit

contending that the action initiated by the Bank to sell the mortgaged property is by law, since the writ petitioner had failed to pay the amount by the scheme offered to the writ petitioner under the available One Time Settlement Scheme. It is also pointed out that even though the writ petitioner has made the initial payments of three instalments, though not fully, she has miserably failed to comply with the terms and conditions of the OTS scheme in order to make the final payment, and therefore, the Bank had no other option than to proceed by the law.

12. The learned single Judge, after taking into account the

judgment of the Apex Court in Vijayakumari v. Indian Bank (AIR

2018 SC 759) held that in exceptional circumstances, the terms of settlement scheme can be extended without causing prejudice to the respondents by compelling payment of interest for the delayed payment. The learned single Judge has also distinguished the

judgment rendered by this Court in Asokan Vasu v. State Bank of

India (2020 SCC OnLine Ker.4282) and held that under certain exceptional circumstances, a departure from the normal rule can W.A. No. 167/2022 :7: be made. It was also found that while the economy of the State was recovering, though at a snails pace, from the initial restrictions and lock-down imposed in the year 2020, the lock-down imposed in the year 2021 impacted the economic recovery of the State drastically.

13. It was further found that the State of Kerala had declared

complete lock-down from 05.05.2021 to 05.07.2021, which period of two months fell within the time of eight months granted to the writ petitioner to clear the terms of OTS scheme. Therefore, it was

held that since the period of One Time Settlement scheme falls

within the lock-down period, it is essential, in the interest of justice, that the writ petitioner is granted the benefit of condonation of delay to repay the amount under the terms of the OTS scheme.

14. The learned single Judge, while arriving at the conclusion,

has distinguished the Division Bench judgment in Asokan Vasu (supra) basically holding that therein the original period of OTS expired by 23.03.2020, which was before the lock-down imposed, while in the instant case, the imposition of lock-down happened during the period of OTS.

15. In support of the directions issued, the learned single

Judge has relied upon the judgment of the Punjab and Haryana High Court in Anu Bhalla and Another v. District Magistrate, Pathankot and Another (AIR 2021 Punjab And Haryana 1), W.A. No. 167/2022 :8: wherein a Division Bench of the Punjab and Haryana High Court,

after referring to various judgments of the Apex Court, has held

that a deserving borrower, who had deposited substantial amounts within the originally stipulated period of settlement proved his bona fides and if he is willing to clear the remaining in a reasonable period and compensate the Bank for the delay, it should be considered with some leniency to attain the aim of such settlement. Therefore, it is contended by the learned counsel for the writ petitioner that it was taking into account the entire gamut of the issue, the learned single Judge has issued the directions.

16. We have heard learned counsel for the appellants Sri. Jawahar Jose and Sri. R. Gopan for the respondent/ writ petitioner, and perused the pleadings and material on record.

17. The failure on the part of the writ petitioner to pay the amount under the overdraft facility in OTS scheme and the consequential action initiated by the Bank are not under dispute.

18. The sole question that was considered by the learned

single Judge was whether any extension could be granted to the writ petitioner for payment of the balance amount under the OTS scheme. It is an admitted fact that there was complete lock down in the State of Kerala from 08.05.2021 to 30.07.2021, which is also discernible from Annexures A2 to A5 Government orders produced

W.A. No. 167/2022 :9: by the Bank in the appeal. Exhibit P2 is the One Time Settlement Scheme offered to the respondent/writ petitioner dated 20.10.2020. Even though the respondent/writ petitioner is said to have paid the initial payment of three instalments, according to the Bank, there was a minor deficiency in the initial payments. However, the balance amount that had to be paid within the 8 months period as per clause 6 of Exhibit P2 scheme admittedly, was not paid by the writ petitioner. But, it can be seen that the said eight months period fell during the State Government's lock-down.

19. In fact, this Court, as per order dated 02.02.2022,

directed the appellant Bank to work out the interest on the balance amount instalment i.e., Rs.65,80,341/- from 30.07.2021; and the writ petitioner was directed to make the payment within 5 days from the date of receipt of such intimation, but making it clear that the order would be subject to the result of the writ appeal.

20. Admittedly, the amount was quantified by the Bank and

intimated to the writ petitioner and it was paid by her. The payment of the said amount is narrated by the writ petitioner in the affidavit filed in the writ appeal. Therefore, for convenience and a comfortable understanding of the same, the relevant portion of the affidavit filed by the respondent/writ petitioner is extracted hereunder: W.A. No. 167/2022 : 10 :

> 3. The appellant filed the above numbered appeal challenging the judgment in W.P.(C) No. 19672/2021. On 02.02.2022, the Division Bench of this Honble Court passed an interim order, directed the appellant to workout the interest on the balance amount of the third installment ie. Rs.65,80,341/- from 30.7.2021 as expeditiously as possible and accordingly intimate the respondent/writ petitioner for payment within five days from the date of such intimation. On 9.2.2022, I submitted representation before the appellants requesting to intimate the amount as per the order dated 2.2.2022 in W.A. No. 167/2022. The photocopy of the representation dated 9.2.2022 submitted by me before the 2nd respondent is produced herewith and marked as Annexure-R1(b). But the appellants did not inform the amount payable towards them as per the direction of this Honourable Court. Hence on 11.2.2022 I transferred Rs.69,92,713/- towards my asset credited Account (Rs.65,80,341/- as balance OTS amount plus Rs.4,12,372/- as interest @ 12% on Rs.65,80,341/- from 30.7.2021 till 11.2.2022 total comes as Rs.69,92,719/-. The photocopy of the money transferring details is produced herewith and marked as Annexure-R1(c). 4) On 14.2.2022 the Assistant General Manager, Stressed Assets Recovery Branch, LMS Compound, Thiruvananthapuram issued a letter directing me to pay

Rs.77,94,166/- (Rs.65,80,341/-- plus interest amount of Rs.12,13,825/-). So, I have to pay an additional amount of Rs.8,01,500/- The photocopy of the notice dated 14.2.2022 issued by the Assistant General Manager, Stressed Assets Recovery Branch, LMS Compound, Thiruvananthapuram to me is produced herewith and marked as Annexure-R1(d). On 18.2.2022 I paid Rs.8,01,500/. The photocopy of the money transferred details is produced herewith and marked as Annexure-R1(e). 5) On 22.2.2022 I submitted representation before the appellant stating that the demand of interest or Rs.12,13,825/- is against the direction of the Honourable Division Bench of this Honourable Court, which is illegal and arbitrary. The interest for

W.A. No. 167/2022 : 11 : the OTS amount is 7.5% per annum. So the interest for the outstanding OTS amount of Rs.65,80,341/- from 30.07.2021 to 11.02.2022 will be Rs. 2,75,682/-.

6. But the appellant illegally claimed and accepted amount of

Rs.12,13,825/- as interest and thereby illegally accepted an excess amount of Rs. 9,38,143/- (Rs.12,13,825/--Rs.2,75,682/-) against the direction of this Honourable Court. Hence I requested to furnish statement of account regarding the rate of interest and how an amount of Rs.12,13,825/- is arrived at as interest as mentioned in their notice. The photocopy of the representation dated 22.02.2022 submitted by me before the Chief Manager, SBI is produced herewith and marked as Annexure R1(f).

21. The Bank has not disputed the payment so effected by

the writ petitioner, and from Annexure R1(a) letter dated 14.02.2022, it is clear that the writ petitioner was directed to remit an amount of Rs.77,94,166/- (i.e., Rs.65,80,341/- plus interest of Rs. 12,13,825/-).

22. The writ petitioner has also advanced a contention that the Bank has imposed excessive interest, and therefore, she seeks closure of the loan account and a

direction to return the original title deeds and other connected documents and an amount of Rs.9,38,143/- excessively paid by her.

23. We have evaluated the rival submissions made across the Bar. In our considered opinion, eight months period provided as per clause 6 of Exhibit P2 OTS scheme fell within the complete lockW.A. No. 167/2022 : 12 :

down restrictions imposed by the State Government. In Asokan (supra) rendered by us, we considered the scope of extension of the scheme under an entirely different factual scenario, which has no bearing on the issue at hand.

24. In the instant case, the contention advanced by the

respondent/writ petitioner is that since no business could be carried on during the period of lock-down, the benefits of the OTS scheme could not be complied with by her fully. It was taking note of the particular factual circumstances involved in the matter only the principles of law laid down by the Apex Court in Vijayakumari (supra) and the Punjab and Haryana High Court in Anu Bhalla (supra), were noted and conclusions were arrived at by the learned Single Judge; but at the same time, it is not entirely depending on

the law so evolved, the impugned judgment was rendered. Even though the learned counsel for the writ petitioner has raised various contentions concerning the restraints that had to be shown by the Court in the matter of the contractual agreement by and between the parties, we are of the view that in extraordinary and exceptional circumstances like a covid-19 pandemic, where the economic situation in the State was adverse, the people were put in peril and severe mental distress; and other adverse economic conditions, stress, and uncertainty were prevailing in the community due to

W.A. No. 167/2022 : 13 : complete lockdown; the writ court had to necessarily take note of the said aspects to consider an issue even arisen in a contractual matter.

25. We are also of the view that the learned single Judge has

extended the period of the scheme by assigning adequate and sufficient reasons and taking note of the situations prevalent in the State, when the OTS scheme was offered to the writ petitioner. Taking into account the said aspects, it cannot be said that the view taken by the learned single Judge is, in any manner, without jurisdiction or unjustifiable. This means, the discretionary power was exercised by the writ court in order to do justice in a given circumstance, which can never be said to be an action without jurisdiction.

26. The learned counsel for the appellant Bank has also

advanced an argument that the judgment rendered by the Apex Court in Vijayakumari (supra) was exercising the power conferred under Article 142 of the Constitution of India and therefore, it is not a binding precedent; however, we are of the view that the learned single Judge has relied upon the said judgment to compare and apply the facts and circumstances involved therein to the case on hand.

27. The learned counsel for the Bank relied upon various W.A. No. 167/2022 : 14 : decisions in support of his contentions; Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal and others

[[2011) 1 SCC 236] with respect to substantial compliance; and ALD Automotive Private Limited v. Commercial Tax Officer NOW UPGRADED AS ASSISTANT COMMISSIONER (CT) AND OTHERS [(2019) 13 SCC 225] in respect of extension of prescribed time. Learned counsel has also relied upon the decision in Bijnor Urban Co-operative Bank Limited, Bijnor and others v. Meenal Agarwal and others [2021 SCC Online SC 1255] with

respect to the intricacies of One Time Settlement Scheme; however, we would say that the said decisions may not strictly apply to the case on hand, in view of the peculiar, compelling and extraordinary situation prevailed in the State entitling the matter to be considered from a different angle than in an ordinary and normal situation.

28. Similarly, learned counsel has relied upon the decision in

the State of Punjab and others v. Rafiq Mashi (Whitewasher) to contend that the decision of the Apex Court in Vijayakumari is not a binding precedent being a judgment rendered in the light of Article 142 of the Constitution of India. However, as we have pointed out above, the learned single Judge has relied upon the

judgment in Vijayakumari (supra) to demonstrate that in similar

facts situations, such a view was adopted by the Apex Court.

Therefore we do not find any reason to interfere with the judgment

of the learned single Judge.

29. In fact, the writ appeal was posted on 07.11.2021 for

pronouncing the judgment, and on that date, the learned counsel for the Bank invited our attention to the recent decision of the Apex Court in State Bank of India v. Arvindra Electronics Pvt. Ltd. [judgment dated 04.11.2022 in Civil Appeal No. 6954 of 2022] and contended that under similar situation, extension of OTS made by the Punjab and Haryana High Court was interfered with, especially referring to Anu Bhalla (supra), and the Judgement was set aside. Therefore, we heard the matter again and reserved for pronouncing the judgment.

30. We have gone through the said latest judgment of the Apex Court. We are of the considered opinion that the said

judgment was rendered in the context of the debtor defaulting the

OTS payment offered by the Bank as per the letter dated 21.11.2017 and the resulting claim raised by the debtor therein in a normal circumstance, unlike the present scenario. This is to say, under an ordinary situation, the principles of law laid down by the Apex Court undoubtedly would prevail upon us, being a judgment in rem guided by Article 141 of the Constitution of India. In our considered opinion, as we have pointed out above, in the instant case, the learned single Judge has taken into account the extraordinary situation that was prevailing in the community due to the pandemic covid-19 and also the complete lockdown imposed by the State Government during the period of OTS in question and arrived at the conclusions.

31. Therefore, we are of the view that a clear distinction can

be drawn in the matter of the scheme offered by the Bank in Arvindra Electronics Pvt. Ltd. (supra), from the one at hand, and therefore, the facts and circumstances dealt with thereunder may not strictly apply to the peculiar facts and circumstances of the case involved in the issue at hand.

32. Since the respondent/writ petitioner has paid the entire

amount under the OTS scheme and interest demanded by the bank as directed by the learned single Judge, and also this Court during the pendency of the appeal, it is only appropriate that the Bank is directed to take necessary action to return the title deed and other documents offered by the writ petitioner towards the guarantee. Therefore it is ordered that the title deed and other documents deposited by the writ petitioner, shall be returned to her within a month from today, if the property has as no other encumbrance with the appellant Bank. Even though the respondent has sought for

W.A. No. 167/2022 : 17 : a direction to return certain amounts paid towards interest as said above, we are not inclined to do so.

Accordingly, the writ appeal is dismissed, with the aforesaid direction. sd/- S. MANIKUMAR, CHIEF JUSTICE. sd/- SHAJI P. CHALY, JUDGE. Rv W.A. No. 167/2022 : 18 : APPENDIX OF WA 167/2022 PETITIONERS ANNEXURES: Annexure A1 THE TRUE COPY OF LETTER DATED 30-11-2021 SANCTIONING OTS SCHEME TO THE WRIT PETITIONER. Annexure A2 TRUE COPY OF THE ORDER DATED 6-5-2021 BEARING NUMBER G.O(RT) 404/2021/DMD. Annexure A3 TRUE COPY OF THE ORDER DATED 14-05-2021 BEARING G.O

(RT) 416/2021/DMD. Annexure A4 TRUE COPY OF THE ORDER DATED 21-05-2021 BEARING NUMBER G.O(RT) 432/2021 DMD Annexure A5 TRUE COPY OF THE ORDER DATED 29-05-2021 BEARING NUMBER G.O(RT) 444/2021/DMD.

RESPONDENTS EXHIBITS: ANNEXURE R1(a): PHOTOCOPY OF THE REPRESENTATION DATED 19.01.2022 SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT. ANNEXURE R1(b): PHOTOCOPY OF THE REPRESENTATION DATED 09.02.2022 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT. ANNEXURE R1(c): PHOTOCOPY OF MONEY TRANSFERRING DETAILS OF THE RESPONDENT BANK FOR Rs.69,92,713/- ANNEXURE R1(d): PHOTOCOPY OF THE NOTICE DATED 14.02.2022 ISSUED BY THE ASSISTANT GENERAL MANAGER, STRESSED ASSETS RECOVERY BRANCH, LMS COMPOUND, THIRUVANANTHAPURAM. ANNEXURE R1(e): PHOTOCOPY OF THE MONEY TRANSFERRED DETAILS OF RESPONDENT BANK. ANNEXURE R1(f): PHOTOCOPY OF THE REPRESENTATION DATED 22.02.2022 SUBMITTED BY ME BEFORE THE CHIEF MANAGER, SBI DATED 22.02.2022.

True Copy PS To Judge. rv