



“C.R.”

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

THURSDAY, THE 25TH DAY OF JULY 2024 / 3RD SRAVANA, 1946

WP(C) NO. 43713 OF 2023

PETITIONER/S:

SHAM P.S., AGED 43 YEARS
S/O. SHAHUL HAMEED, PROPRIETOR, SHA SELECTIONS AND SHA
FABRICS,ALUNKEL VELI, C.M.C - 26,CHERTHALA, ALAPPUZHA, PIN -
688524

BY ADVS.
V.K.PEERMOHAMED KHAN
GIRISH KUMAR V.C
ASNA M.B.

RESPONDENT/S:

1 STATE BANK OF INDIA, REPRESENTED BY ITS CHIEF MANAGER,
SARB, THIRUVANANTHAPURAM, OPP. MUSEUM WEST GATE,VIKAS
BHAVAN P.O, THIRUVANANTHAPURAM, PIN - 395033

2 STATE BANK OF INDIA,REPRESENTED BY ITS BRANCH MANAGER,
CHERTHALA BRANCH, ALAPPUZHA, PIN - 688524

BY ADV JAWAHAR JOSE

THIS WRIT PETITION (CIVIL) HAVING RESERVED ON 11.07.2024, THE COURT
ON 25.07.2024 DELIVERED THE FOLLOWING:



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J U D G M E N T

Heard Mr Mohamed Khan learned Counsel for the petitioner, and Mr Jawahar Jose learned Standing Counsel for State Bank of India.

2. The petitioner is the proprietor of the firm 'M/s Sha Selections' as well as the firm 'M/s Sha Fabrics'. The petitioner had availed two loan facilities of Rs.25 lakhs and Rs.10 lakhs for the purposes of running its business in a textile shop. The petitioner had given the residential property in his name as security for availing the aforementioned two loan facilities from the respondent Bank. The petitioner suffered losses because of the spread of the COVID-19 pandemic and the lockdown imposed due to COVID-19. The petitioner, therefore, defaulted in serving the two loan accounts.

2.1 The respondent Bank initiated SARFAESI proceedings against the petitioner and filed an Original



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Application before the DRT-II Ernakulam. In the meantime, the respondent Bank announced the “Rinn Samadhan 2021-22 Scheme” for the settlement of the accounts. The respondent Bank offered the said scheme to the petitioner as well by sending letters dated 10.11.2021 and 31.01.2022. In pursuance of the said letters, the petitioner approached the respondent Bank. According to the petitioner, the responsible Officer of the Bank handed over two calculation slips to the petitioner for payment in pursuance of the “Rinn Samadhan 2021-22 Scheme” and “SBI OTS Scheme 2021”. In respect of the first loan account, Rs.22,92,712/- and in respect of the second loan account, Rs.6 lakh was calculated to be paid by the petitioner.

2.2 The first loan account in respect of Sha Selections, the offer was made to the petitioner for making payment of the entire outstanding amount under OTS at Rs.28,66,712.40 by order dated 31.01.2022 in the following manner:



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- i. Rs.2,86,671.24 was to be deposited upfront.
- ii. Rs.2,86,671.24 to be deposited within 1 month from the sanction of OTS as the first instalment, and
- iii. Rs.2,86,671.24 was to be deposited within 60 days from the sanction of OTS as the second installment.
- iv. The entire balance amount of Rs.20,06,698.68/- was to be deposited within 6 months of the date of sanction, together with interest at the MCLR rate.

However, if Rs.20,06,698.68 is deposited within 90 days, the borrower need not be liable to pay any amount other than the aforesaid amount. This means that if the amount was deposited within 90 days, the borrower was not required to pay interest.

2.3 As regards the loan availed by Sha Fabrics, the petitioner was eligible under the “Rinn Samadhan 2021-22 Scheme”, and the petitioner was issued a communication



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dated 10.11.2022 by the Bank. The amount arrived at in the settlement was Rs.7,50,000/- which was to be paid in the following manner:

- i. Rs.75,000/- was to be deposited upfront.
- ii. Rs.75,000/- to be deposited within 1 month from the sanction of OTS as the first instalment.
- iii. Rs.75,000/- to be deposited within 60 days from the sanction of OTS as the second installment.
- iv. The entire balance amount of Rs.5,25,000/- was to be deposited without interest within 4 months from the date of sanction or with interest at the rate of MCLR within 6 months from the date of sanction. The petitioner was obliged to pay the entire amount within 6 months, and the benefit was not extended beyond 6 months.

3. It is not in dispute that the petitioner had paid the entire amount as per the two OTS schemes in respect of the



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two loan accounts. He, therefore, submits that once the petitioner has paid the entire OTS amount in respect of the two accounts within the outer limit, the petitioner is entitled to get the release of the title deeds in respect of the mortgaged asset of the petitioner for which he has made a request in Ext.P5.

4. Learned Counsel for the Bank has not disputed the fact that the petitioner paid the entire amount within the outer limit of making payment as per the two OTS schemes. However, he submits that the petitioner defaulted in remitting the second instalment on time and, therefore, the petitioner is not entitled to the benefit of the said schemes.

4.1 It is not disputed that the Bank has accepted the amount paid by the petitioner towards the discharge of liability in respect of the two OTS schemes offered to him within the outer time limit fixed by the Bank. After accepting the amount, the Bank never objected that the petitioner had



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not made the payment of the second instalment on time and, therefore, the OTS scheme had lapsed. No such communication was issued to the petitioner.

5. Once the petitioner has deposited the amount and the Bank has accepted, it would not be proper for the Bank to say that the petitioner did not comply with the terms and conditions of the two OTS schemes in not making the payment of the second instalment on time. The Bank should not have accepted the amount and addressed a communication to the petitioner saying that since the petitioner did not comply with the terms of the two settlement schemes, the settlement schemes were withdrawn, and the petitioner should pay the entire outstanding amount. In the absence of such communication and after accepting the amount paid by the petitioner in terms of the settlement scheme, though with some delay in making payment of the second instalment, the



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entire payment was made within the outer limit as per the settlement scheme, this Court finds the stand of the Bank untenable.

6. Thus, the writ petition is allowed. The Bank is directed to release the title documents to the petitioner in respect of his property which has been mortgaged by the petitioner for availing the loan facilities from the respondent Bank. The petitioner is, however, liable to pay interest on the delayed payment of the second instalment at the rate at which the loan was advanced to the petitioner. The Bank shall calculate the interest for the delayed payment of the second instalment in respect of the two OTS schemes offered to the petitioner, and the petitioner should pay the amount so determined within fifteen days from the date of the communication. The Bank shall calculate the interest and communicate the same to the petitioner within a period of 15



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days from today. On payment of the interest so calculated on delayed payment of the second instalment by the petitioner, the Bank shall release the title deed of the property to the petitioner forthwith.

The writ petition stands allowed. No order as to costs.

Sd/-

DINESH KUMAR SINGH

JUDGE

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APPENDIX OF WP(C) 43713/2023

PETITIONER EXHIBITS

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| Exhibit P1 | TRUE COPY OF THE LETTER DATED 31.01.2022 SARB/TVM/2408/2021-22 FOR LOAN ACCOUNT IN THE NAME OF M/S. SHA SELECTIONS |
| Exhibit P1(a) | TRUE COPY OF THE CALCULATION SLIP FOR REMITTANCE OF AMOUNTS UNDER EXHIBIT-P.1 LETTER |
| Exhibit P2 | TRUE COPY OF THE LETTER DATED 10.11.2021 SARB/TVM/1475/2021-22 FOR LOAN ACCOUNT IN THE NAME OF M/S. SHA FABRICS |
| Exhibit P2(a) | TRUE COPY OF THE CALCULATION SLIP FOR REMITTANCE OF AMOUNTS UNDER EXHIBIT-P.2 LETTER |
| Exhibit P3 | TRUE COPY OF THE REMITTANCE SLIPS TOWARDS THE EXT-P.1 LOAN ACCOUNT IN ACCORDANCE WITH THE OTS APPROVED BY THE BANK |
| Exhibit P4 | TRUE COPY OF THE REMITTANCE SLIPS TOWARDS THE EXT-P.2 LOAN ACCOUNT IN ACCORDANCE WITH THE OTS APPROVED BY THE BANK |
| Exhibit P5 | TRUE COPY OF THE LETTER SUBMITTED BY THE PETITIONER DATED 30.08.2022 |
| Exhibit P6 | TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE TALUK LEGAL SERVICES AUTHORITY AS PLP NO: 511/2023 |