



2024:KER:92019

W.A.Nos.1275, 1348 & 1172 of 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR

&

THE HONOURABLE MR. JUSTICE S.MANU

THURSDAY, THE 5TH DAY OF DECEMBER 2024 / 14TH AGRAHAYANA, 1946

WA NO. 1275 OF 2024

AGAINST THE JUDGMENT DATED 25.07.2024 IN
WP(C) NO.43713 OF 2023 OF HIGH COURT OF KERALA

APPELLANTS/RESPONDENTS:

- 1 THE STATE BANK OF INDIA
REPRESENTED BY ITS CHIEF MANAGER, S.A.R.B.,
OPPOSITE MUSEUM WEST GATE, VIKAS BHAVAN (P.O),
THIRUVANANTHAPURAM, PIN - 695033.

- 2 THE STATE BANK OF INDIA
REPRESENTED BY ITS BRANCH MANAGER,
CHERTHALA BRANCH, ALAPPUZHA DISTRICT,
PIN - 688524.
BY ADV.JAWAHAR JOSE

RESPONDENT/WRIT PETITIONER:

SHAM P.S.,
AGED 44 YEARS,
S/O. SHAHUL HAMEED, PROPRIETOR,
SHA SELECTIONS AND SHA FABRICS, ALUNKAL VELI,
C.M.C.-26, CHERTHALA,
ALAPPUZHA DISTRICT, PIN - 688524.

BY ADV.V.K.PEERMOHAMED KHAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
05.12.2024, ALONG WITH WA.Nos.1348/2024 & 1172/2024, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR

&

THE HONOURABLE MR. JUSTICE S.MANU

THURSDAY, THE 5TH DAY OF DECEMBER 2024 / 14TH AGRAHAYANA, 1946

WA NO. 1348 OF 2024

AGAINST THE ORDER DATED 08.08.2024 IN
WP(C) NO.28353 OF 2024 OF HIGH COURT OF KERALA

APPELLANT/RESPONDENT:

CHIEF MANAGER,
STATE BANK OF INDIA STRESSED ASSETS RECOVERY
BRANCH, LMS COMPOUND, OPPOSITE MUSEUM WEST GATE,
VIKASBHAVAN P.O., THIRUVANANTHAPURAM DISTRICT,
PIN - 695033.

BY ADV S.LAKSHMY

RESPONDENT/PETITIONER:

MUHAMMED RAFI.M.,
S/O.MUHAMMED NOODU,
SAFEERMANZIL, MANGAD P.O., KOLLAM DISTRICT,
PIN - 691015.

BY ADV.SHRI.J.G.SYAMNATH

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
05.12.2024, ALONG WITH WA.1275/2024 & 1172/2024, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:



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W.A.Nos.1275, 1348 & 1172 of 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR

&

THE HONOURABLE MR. JUSTICE S.MANU

THURSDAY, THE 5TH DAY OF DECEMBER 2024 / 14TH AGRAHAYANA, 1946

WA NO. 1172 OF 2024

AGAINST THE JUDGMENT DATED 09.07.2024 IN
WP(C) NO.23738 OF 2024 OF HIGH COURT OF KERALA

APPELLANT/RESPONDENT:

STATE BANK OF INDIA
STRESSED ASSETS RECOVERY BRANCH LMS COMPOUND,
OPP.MUSEUM WEST GATE, VIKAS BHAVAN P.O.,
THIRUVANANTHAPURAM DISTRICT. REPRESENTED THROUGH
THE AUTHORIZED OFFICER, PIN - 695033.

BY ADV M.JITHESH MENON

RESPONDENT/PETITIONER:

ELIZABETH SUNNY
AGED 54 YEARS
W/O VARGHESE T. CHACKO, THAIKOOTTATHIL HOUSE,
ANGADI P.O., RANNI,
PATHANAMTHITTA DISTRICT, PIN - 689674.

BY ADVs.
SRI.E.A.BIJUMON
SRI.SREEHARI V.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
05.12.2024, ALONG WITH WA.1275/2024 AND 1348/2024, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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[CR]

NITIN JAMDAR, C.J.
&
S.MANU, J.

W.A.Nos.1275, 1348 & 1172 of 2024

Dated this the 05th day of December, 2024

JUDGMENT

S.MANU, J.

The question arising in these appeals concerns scope of interference in writ petitions pleading for grant of the benefits of One Time Settlement Schemes (hereinafter referred to as 'OTS Schemes'). Appellant in all these appeals is the State Bank of India. The Bank is deeply aggrieved by the directions issued by the learned Single Judge extending the benefits of OTS Schemes to the party Respondents in spite of the lapses in discharging their obligations under the Scheme. The Appellant Bank contends that the directions issued by the learned Single Judge are inconsistent with the law laid down by the Hon'ble Supreme Court. We proceed to dispose all appeals by this common judgment as the basic issue to be decided is common.

2. We will refer to the facts of the cases at first.



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W.A.No.1275/2024

3. Respondent in W.A.No.1275/2024 had availed two loan facilities of ₹25,00,000/- and ₹10,00,000/- for the purpose of running business. He had offered the residential property in his name as security for availing the aforementioned two loan facilities from the Bank. When the Respondent committed default, the Bank initiated measures under the SARFAESI Act and also filed Original Application before the DRT. While so, the Bank announced “RINN SAMADHAN 2021-22 SCHEME” for settlement of accounts and the benefit of the Scheme was offered to the Respondent also. Pursuant to the same, the Respondent remitted first installment of ₹2,75,000/- for one account as per the Scheme on 21 February 2022 and ₹75,000/- for another account on 22 February 2022. The second installment was not paid on time. It was due in April 2022. Though the amount was paid after April, same was received by the Bank. Case of the Respondent is that the entire amount as per the special scheme was remitted and was accepted by the Bank without any murmur. However, the Bank later took the stand that on account of delay in paying the second installment benefit of the scheme would not be available to the Respondent. The Bank demanded entire amount from the Respondent with respect to both loan accounts. By Annexure-A1 letter dated 19 August 2022 Bank informed the Respondent that payment of the



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amount calculated on the basis of the special scheme, after the failure to remit the second installment on time, was without concurrence of the Bank. The Bank clarified that the remittance cannot be accounted under the special OTS scheme and the Respondent can seek refund of the amount or enter into fresh terms for a compromise settlement. Another communication dated 29 September 2022 produced as Annexure-A2 was also issued to the Respondent. The learned Single Judge by the impugned judgment allowed the writ petition and directed the Bank to release the title documents of the mortgaged properties. The Respondent was directed to pay interest for the delayed payment of the second installment to the Bank.

W.A.No.1348/2024

4. The Respondent in W.A.No.1348/2024 had availed various credit facilities from the Appellant Bank. The account of the Respondent was classified as NPA on account of default in repayment and proceedings under the SARFAESI Act followed. The Respondent approached the DRT and filed writ petitions 27100/2019, 34373/2019 and 30107/2022. A compromise settlement was arrived at on 01 December 2022 on the basis of which the Respondent was liable to remit the amounts within 31 March 2023 extendable upto 19 June 2023. The Respondent failed to discharge the said obligation and



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approached this Court in W.P.(C)No.28353/2024. Earlier litigations were not revealed in the writ petition. Though the Bank challenged the maintainability of the writ petition, the learned Single Judge by order dated 8 August 2024 directed the Respondent to produce a demand draft for ₹10,00,000/- favouring the Bank and directed the Bank to accept the said amount towards full and final settlement of the dues. The Bank was prevented from proceeding with coercive measures. Aggrieved by the interim order dated 8 August 2024 W.A.No.1348/2024 was preferred.

W.A.No.1172/2024

5. As per the case of the Appellant Bank, the Respondent committed default in repayment of loan amount and the Bank classified the accounts as Non-Performing Assets (NPA) and proceedings under the SARFAESI Act were also initiated. However, in view of the eligibility under the “RINN SAMADHAN 2023-24 SCHEME”, the Respondent was permitted to settle the account by paying a total amount of ₹14,06,431/-. The OTS was sanctioned on 30.12.2023 and as per the terms and conditions of the settlement, the Respondent was bound to remit ₹3,00,000/- within 27.02.2024 and the balance amount of ₹11,00,000/- on or before 28.03.2024. However, the Respondent has paid only an amount of ₹3,00,000/-. She



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approached this Court in W.P.(C)No.23738/2024 challenging the proceedings of the Advocate Commissioner under the SARFAESI Act and seeking direction to permit her to settle the liability under the One Time Settlement Scheme. The Bank contended that the benefit of the scheme cannot be extended as the borrower failed to comply with the terms and conditions. However, the learned Single Judge disposed the writ petition directing to extend the time period of the OTS Scheme till 8 August 2024 with applicable interest from 1 April 2024 to 8 August 2024. It was observed that in case of failure, the Bank shall be free to proceed. Dispossession from the property was directed to be kept on hold till 8 August 2024.

6. We heard Mr.Jawahar Jose, Ms.S.Lakshmy and Mr.M.Jithesh Menon, the learned counsel appearing for the Bank and Mr.V.K.Peer Mohamed Khan, Mr.J.G.Syamnath and Mr.E.A.Bijumon, the learned counsel appearing for the Respondent in W.A.No.1275/2024, W.A.No.1348/2024 and W.A.No.1172/2024 respectively.

7. Crux of the submissions made by the learned counsels for the bank is that the High Court will not be justified in interfering with proceedings initiated under the provisions of the SARFAESI Act in writ



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petitions filed under Article 226 of the Constitution of India. On the contrary, the learned counsel appearing for the party Respondents defended the impugned judgments and order stating that directions therein have been issued on equitable considerations and the discretionary orders passed by the learned Single Judge are not liable to be interfered with in the intra-court appeal. In W.A.No.1275/2024 it was pointed out that the Bank, despite the delay in payment of second installment, received the entire amount as per the OTS Scheme and then turned around.

8. In these appeals the major contention projected by the Bank is that the party Respondents had lost the right to claim the benefit of any OTS Scheme by failing to discharge their obligations under the schemes and therefore the directions issued by the learned Single Judge, compelling the Bank to extend the benefit despite default committed are improper. The learned counsel appearing for the Bank placed reliance on the judgments of the Hon'ble Supreme Court in *Bijnor Urban Co-operative Bank Limited, Bijnor and others v. Meenal Agarwal and others* [(2023) 2 SCC 805] and *State Bank of India v. Arvindra Electronics Pvt. Ltd.* [(2023) 1 SCC 540] and contended that the Court cannot intervene with the terms of settlement and re-write the same.



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9. Several writ petitions under Article 226 seeking interference in matters pertaining to disputes arising from OTS schemes, come up before the High Court even if the proceedings under the SARFAESI Act are pending. Scope of intervention in such cases has been analyzed by the Hon'ble Supreme Court in many judgments and in plain terms the Apex Court has declared that it is improper to issue orders in exercise of the writ jurisdiction.

10. We refer to the following observations of the Apex Court in *Union Bank of India v. Panchanan Subudhi*, [(2010) 15 SCC 552] :-

“7. In our view, the approach adopted by the High Court was clearly erroneous. When the respondent failed to abide by the terms of one-time settlement, there was no justification for the High Court to entertain the writ petition and that too by ignoring the fact that a statutory alternative remedy was available to the respondent under Section 17 of the Act.”

11. In *State Bank of India v. Arvindra Electronics (P) Ltd.*, [(2023) 1 SCC 540] it was held as follows:

“22. Even otherwise as rightly submitted on behalf of the Bank directing the Bank to reschedule the payment under OTS would tantamount to modification of the



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contract which can be done by mutual consent under Section 62 of the Contract Act. By the impugned judgment and order rescheduling the payment under the OTS Scheme and granting extension of time would tantamount to rewriting the contract which is not permissible while exercising the powers under Article 226 of the Constitution of India.”

12. In *Bijnor Urban Coop. Bank Ltd. v. Meenal Agarwal*, [(2023) 2 SCC 805] it was held as follows:-

“14. 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.”

13. It is also apposite to refer the following observations of the Hon’ble Apex Court in *State Bank of Travancore v. Mathew K.C., [(2018) 3 SCC 85]* in the context of the instant appeals-

“15. It is the solemn duty of the court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law. In financial matters grant of ex parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order. Loans by financial institutions are granted from public money generated at the taxpayer's expense. Such loan does not become the property of the person taking the loan, but retains its character of public money given in a fiduciary capacity as entrustment by the public. Timely repayment also ensures liquidity to facilitate loan to another in need, by circulation of the money and cannot be permitted to be blocked by frivolous litigation by those who can afford the luxury of the same.



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14. Banks deal with public money. Loans are provided out of their funds on specific terms and conditions. The loan agreement between the creditor bank and borrower has its own sanctity. Banks provide special schemes such as One Time Settlement Schemes to enable defaulters to wipe off the liabilities. Terms and conditions of such schemes are formulated on the basis of commercial prudence. Often, waiver of penal interest or other components is offered as benefit to the borrowers. A borrower availing the benefit of the Scheme is bound by terms and conditions of the Scheme in its entirety. If the borrower is not in a position to or unwilling to act in accordance with any of the terms and conditions of the OTS Scheme or committed breach of the terms he cannot be permitted to seek direction from the Court to compel the bank to honour its obligations. If such pleas are acceded to, that will definitely amount to re-writing of the agreement between the creditor and the borrower.

15. In the light of the law laid down by the Hon'ble Supreme Court in the judgments referred above, we are of the considered view that Respondents in none of these cases are entitled for the reliefs granted by way of the impugned judgments and interim order. It is evident from the pleadings in all these cases that the borrowers have failed to discharge their obligations under the OTS Scheme



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by making payments in accordance with the schedules for payment. Therefore, we allow all these writ appeals. Judgment dated 25 July 2024 in W.P.(C)No.43713/2023, interim order dated 8 August 2024 in W.P.(C)No.28353/2024 and judgment dated 9 July 2024 in W.P.(C)No.23738/2024 are hereby set aside. W.P.(C)Nos.43713/2023 and 23738/2024 shall stand dismissed.

Sd/-

**NITIN JAMDAR
CHIEF JUSTICE**

Sd/-

**S.MANU
JUDGE**

skj



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APPENDIX OF WA 1275/2024

PETITIONER'S ANNEXURES

Annexure-A1 TRUE COPY OF NOTICE DATED 19-8-2022,
TOGETHER WITH THE ACKNOWLEDGEMENT CARD
OF THE POSTAL DEPARTMENT.

Annexure-A2 TRUE COPY OF COMMUNICATION
DATED 29-9-2022, TOGETHER WITH THE
ACKNOWLEDGEMENT CARD OF THE POSTAL
DEPARTMENT.