



HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 8690/2023

Bank of Baroda, having its Office at Opposite Town Hall, Udaipur, Rajasthan, 313001 through its Assistant General Manager, (Now) through Authorised Officer Pratap Singh Meena, Chief Manager.

-----Petitioner

Versus

1. U.N. Automobiles Pvt. Ltd., having its Registered Office at UN Automobiles Workshop, Goverdhan Vilas, Udaipur, 313001.
2. Amit Prakash Gupta, S/o Late Shri Indra Prakash, R/o House No. 512, Panch Ratna Complex, Fatehpura, Udaipur-313001.
3. Amita Prakash Gupta, S/o Late Shri Indra Prakash, R/o House No. 512, Panch Ratna Complex, Fatehpura, Udaipur-313001.

-----Respondents

For Petitioner(s)	:	Mr. Shivangshu Naval Ms. Akanksha Naval
For Respondent(s)	:	Ms. Anita Agarwal with Mr. Laxmi Kant, Mr. Vibhanshu Sharma and Ms. Kalpana Mr. Amol Viyas

JUSTICE ANOOP KUMAR DHAND

Order

Reserved on	26/08/2025
Pronounced on	29/08/2025

1. Matter comes up on an application submitted by the respondents under Article 226(3) of the Constitution of India for vacation of *exparte* stay order dated 02.06.2023.
2. With the consent of counsel for the parties, the arguments have been heard finally and this writ petition is decided by this order.





3. By way of filing this writ petition, a challenge has been led to the impugned order dated 23.05.2023 by which the misc. application No. 81/2018 submitted by the respondents has been allowed by the Debts Recovery Tribunal (for short, 'the DRT') and the earlier orders dated 28.01.2016 and 30.03.2016 have been modified by granting the respondents a period of twelve months to complete the repayment of the remaining amount as per the OTS/ settlement.

4. Counsel for the petitioner-Bank submits that when the default was committed by the respondents, proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act, 2002') were initiated against the respondents-borrowers. In the meantime, a One Time Settlement (OTS) was arrived at between the parties and in terms of the aforesaid OTS/ settlement, the Securitisation Application, pending before the DRT, was disposed of vide order dated 28.01.2016 along with certain terms and conditions. Counsel submits that as per the terms and conditions of the OTS/ settlement, the respondents were supposed to pay the balance amount on or before 31.03.2018 but inspite of the above, when the respondents sought extension of the said period by way of making certain communications/correspondences with the petitioner-Bank, their request was entertained and further time was granted to them to make repayment on or before 31.06.2018. Counsel submits that on the basis of the aforesaid, the amended consent recovery certificate was issued by the DRT vide order dated 30.03.2016. Counsel further submits that when the aforesaid order was not complied with by the respondents, the



OTS/settlement stood frustrated. Therefore, the petitioner-Bank decided to proceed against the respondents for recovery of the balance amount. At this stage, the respondents submitted a misc. application before the DRT seeking modification of the earlier orders dated 28.01.2016 and 30.03.2016. Counsel submits that without having any jurisdiction, the DRT had entertained the misc. application submitted by the respondents, contrary to the provisions contained under Section 62 of the Indian Contract Act. Counsel submits that once the Securitisation Application was disposed of by the DRT, there could be no extension or rescheduling of the repayment terms and no further time ought to have been granted by the DRT to the respondents. Hence under these circumstances, the petitioner has approached this Court by way of filing the instant writ petition, which is maintainable in the light of the judgment passed by the Hon'ble Apex Court in the case of **Assistant Commissioner of State Tax Vs. Commercial Steel Limited**, reported in **2022 (16) SCC 447**. Counsel submits that by allowing the misc. application, submitted by the respondents and granting further time to the respondents to deposit the balance amount, the DRT has exceeded its jurisdiction. Hence, under these circumstances, interference of this Court is warranted.

5. Lastly, he argued that much water has flown after passing of the order by the DRT and the interim order passed by this Court and subsequently, the proceedings had been initiated against the respondents by the petitioner under the IBC before the NCLT wherein final orders have been also passed and the matter is now reserved for passing appropriate orders.



6. Per contra, counsel for the respondent Nos. 2 and 3 opposed the submissions made by counsel for the petitioner and submitted that the OTS/Settlement was not given effect by the petitioner and the same was frustrated by the petitioner-Bank. Counsel further submitted that the respondents were having 11 plots, out of which 6 were sold and a portion of the borrowed amount had been repaid to the petitioner and the remaining amount was likely to be paid by way of purchase of the aforesaid company assets. However, the petitioner-bank did not permit inspection of the original documents to them, which caused the delay and therefore, the OTS/settlement was not complied with within time. Counsel further submitted that narrating all these facts, the respondents submitted a misc. application seeking extension of time, which was rightly allowed by the DRT granting further twelve months time to the petitioner to repay the borrowed amount. Counsel also submitted that the DRT had jurisdiction to entertain the misc. application, submitted by the respondents, under Section 19(25) of the Recovery of Debts Due To Banks and Financial Institutions Act, 1993, and according to the aforesaid provision, the Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice. Counsel submitted that in order to secure the ends of justice, the misc. application, submitted by the respondents, was allowed.

Lastly, she argued that the impugned order passed by the DRT is appealable before the Debts Recovery Appellate Tribunal (for short, 'the DRAT') but instead of approaching the DRAT by



way of filing an appeal, the petitioner has straight-away approached this Court by way of filing the instant writ petition under Article 226 of the Constitution of India, which is not maintainable in the light of the judgments passed by the Hon'ble Apex Court in the cases of;

- (1) **Punjab National Bank Vs. O.C. Krishnan and Ors.** reported in **2001(6) SCC 569**
- (2) **K. Sreedhar Vs. Raus Constructions Pvt. Ltd., and Ors.** reported in **AIR 2023 SC 306.**
- (3.) **Ajanta LLP Vs. Casio Keisanki Kabushiki Kaisha,** reported in **2022 (5) SCC 449.**

Finally, she argued that the only remedy available to the respondents for redressal of their grievances was to approach the DRT by way of filing of an application, when the OTS was not duly complied with by the respondents. Counsel submits that such application submitted by the respondents was fully maintainable before the DRT in the light of the judgment passed by the Hon'ble Apex Court in the case of **Manjunath Tirakappa Malagi and Anr. Vs. Gurushiddappa Tirakappa Malagi** in Special Leave Petition No. 4812/2023.

7. Mr. Amol Vyas, Adv. appearing on behalf of the respondent No. 1 submits that subsequent to the order passed by the DRT and the interim order passed by this Court, much water has flown and the proceedings have been initiated against the respondents by the petitioner under the IBC before the NCLT and furthermore, the CIRP plan has also been formulated under Section 17 of the IBC Code, 2016. Therefore, under these circumstances, interference of this Court is not warranted.



He further argued that the respondent Nos. 2 and 3 are simply the promoters of respondent No. 1-Company and their posts/positions have been suspended. Now, they no longer have the authority to sell or alienate the assets and properties of the respondent No. 1.



8. I have heard learned counsel for the parties and with their assistance perused the material available on record.

9. Perusal of the record indicates that the OTS/settlement took place between the parties and based on the same, the DRT passed compromise-cum-consent decree certificate vide order dated 28.01.2016, specifying certain terms and conditions for repayment of the balance borrowed amount by the respondents on or before 31.03.2018. It appears that subsequently, certain correspondences/communication were made between the respondents and the petitioner-Bank wherein the respondents expressed their inability to comply with the aforesaid terms and conditions, pursuant to the order dated 28.01.2016. Subsequently, both the parties approached the DRT seeking amendment of the consent decree. Thereafter, the DRT vide order dated 30.03.2016 passed the amended consent recovery certificate by which the respondents were supposed to deposit the borrowed amount on 31.03.2018. It appears that the respondents failed to adhere to the terms and conditions of the amended consent recovery certificate dated 30.03.2016 and faced with this, the petitioner treated the OTS/settlement as frustrated and decided to initiate further proceedings against the respondents.

10. At this stage, the respondents once again approached the DRT again by way of filing a misc. application mentioning certain



irregularities in the compliance of the consent recovery certificate. The DRT vide order dated 23.05.2023 allowed the aforesaid misc. application, submitted by the respondents and granted the respondents further opportunity to repay the remaining amount, as per the OTS/Settlement.



11. Aggrieved by the aforesaid order, the petitioner-Bank has approached this Court by way of filing the instant writ petition.

12. Now, the question which remains for consideration before this Court is whether a writ petition is maintainable against the order passed by the DRT particularly when the petitioner has an alternative statutory remedy of filing an appeal before the DRAT. On many occasions, the Hon'ble Apex Court has held that the writ petition under Article 226 of the Constitution of India can be instituted and would be maintainable before the High Court even if there exists an alternative remedy. The alternative remedy is not an absolute bar on the maintainability of a writ petition under Article 226 of the Constitution of India, if the case falls under the exceptional circumstances i.e. where the DRT has exceeded in exercising its jurisdiction.

13. The Hon'ble Apex Court in the case of **PHR Invent Educational Society Vs. UCO Bank and Ors**, reported in **2024(6) SCC 579** has held that the High Court can entertain a petition against the order passed by the DRT, if the DRT has acted in defiance of the fundamental principles of the judicial procedure.

14. In the instant case, the DRT exceeded its jurisdiction while entertaining the misc. application, submitted by the respondents and granting them further opportunity to repay the borrowed



amount. The aforesaid order was passed by the DRT contrary to the earlier orders dated 28.01.2016 and 30.03.2016.

15. This fact is not in dispute that Section 19(25) of the Recovery of Debts Due To Banks and Financial Institutions Act, 1993, confers inherent discretionary powers on the DRT to pass appropriate orders. However, such powers are exercisable in relation to the pending petition before the Tribunal and not to the application which has been submitted after final adjudication of the Securitization Application filed under Section 17 or 18 of the SARFAESI Act, 2002.

16. Furthermore, a post disposal application for modification and clarification of the order of disposal shall lie only in rare cases. The Hon'ble Apex Court in the case of **Jaipur Vidyut Vitran Nigam Ltd. And Ors. Vs. Adani Power Rajasthan Ltd. and Anr.** Reported in **2024 SCC Online SC 313** has held that any attempt to file misc. application for clarification, modification or recall, in order to seek a substantive modification of the judgment of the Court is an attempt to change the norms of the original order and such an attempt is not permissible in a misc. application.

17. Hence, it is clear that the DRT became *functus officio* after passing the Consent Recovery and the Amended Consent Recovery Certificate dated 28.01.2016 and 31.03.2016 respectively and thereafter, nothing further remained with the DRT to re-decide/re-consider or revise on the same subject matter, unless there is a legal provision to do so.

18. The Hon'ble Apex Court in the case of **State Bank of India v. S.N. Goyal**, Reported in **(2008) 8 SCC 92**: held as follows:





"18. It is true that once an Authority exercising quasi judicial power, takes a final decision, it cannot review its decision unless the relevant statute or rules permit such review. But the question is as to at what stage, an Authority becomes functus officio in regard to an order made by him. P. Ramanatha Aiyar's Advance Law Lexicon (3rd Edition, Vol. 2 Pages 1946-47) gives the following illustrative definition of the term 'functus officio':

Thus a Judge, when he has decided a question brought before him, is functus officio, and cannot review his own decision.

Black's Law Dictionary (Sixth Edition Page 673) gives its meaning as follows:

Having fulfilled the function, discharged the office, or accomplished the purpose, and therefore, of no further force or authority.

19. Therefore, a Judge becomes **functus officio** when he pronounces, signs and dates the judgment (subject to Section 152 and power of review). The position is different with reference to quasi judicial authorities. While some quasi judicial tribunals fix a day for pronouncement and pronounce their orders on the day fixed, many quasi judicial authorities do not pronounce their orders. Some publish or notify their orders. Some prepare and sign the orders and communicate the same to the party concerned. A quasi judicial authority will become **functus officio** only when its order is pronounced, or published/notified or communicated (put in the course of transmission) to the party concerned. When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the Authority from correcting it or altering it for valid reasons. But once the order is pronounced or published or notified or communicated, the Authority will become **functus officio**."

19. In the considered opinion of this Court that after passing the consent recovery certificate dated 30.03.2016, the DRT became *functus officio* and was not having any jurisdiction to entertain the misc. application submitted contrary to the conditions of the OTS/Settlement. The Hon'ble Apex Court in the case of **State**



Bank of India Vs. Arvindra Electronics Private Limited,
reported in **2023 (1) Supreme Court Cases 540** has dealt with

the identical situation in para 22 which reads as under:-

“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 contract which can be done by mutual consent under Section 62 of the Indian 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.”

20. In the aforesaid case, the Hon’ble Apex Court has categorically held that re-scheduling of order would tantamount to modification of the contract, which can only be done by mutual consent under Section 62 of the Indian Contract Act and re-writing the contract is not permissible while exercising the powers contained under Article 226 of the Constitution of India.

21. Similarly, in the case of **Bijnor Urban Cooperative Bank Ltd. Vs. Meenal Agarwal and Ors.** reported in **2023(2) SCC 805**, the Hon’ble Apex Court has held in para 14 and 15 as under:-

“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.

15. In view of the aforesaid discussion and for the reasons stated above, we are of the firm opinion that the High Court, in the present case, has materially erred and has exceeded in its jurisdiction in issuing a writ of mandamus in exercise of its powers under Article 226 of the Constitution of India by directing the appellant-Bank to positively consider/grant the benefit of OTS to the original writ petitioner. The impugned judgment and order passed by the High Court is hence unsustainable and deserves to be quashed and set aside and is accordingly quashed and set aside."

22. Once the Hon'ble Apex Court has held that even this Court has no such power to rewrite the terms and conditions of the OTS/settlement, then certainly the DRT lacked jurisdiction to modify the terms of the consent recovery certificate. Hence, DRT has committed an error in entertaining the misc. application submitted by the respondents. Therefore under such circumstances, the impugned order is not sustainable in the eyes of law and the same is liable to be and is hereby quashed and set aside.

23. The present writ petition accordingly stands allowed. Consequences to follow.

24. Stay application and all pending application (s), if any, also stand disposed of.

(ANOOP KUMAR DHAND),J

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