



2025:DHC:4428-DB



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 27.05.2025

+ **W.P.(C) 1627/2020 & CM APPL.12696/2025**

**INDU NARAIN**

....Petitioner

versus

**STATE BANK OF INDIA & ORS.**

....Respondents

**Advocates who appeared in this case**

For the Appellant : Mr. M. Batta, Sr. Advocate with  
Mr. Vivek Malik & Mr. Vivek  
Sinaha, Advocates.

For the Respondent : Mr. Jai Mohan, Mr. Aayush Gupta,  
Advocates for R-1/SBI.  
Mr. Gaurav Kakar, Mr. Nishant  
Anand, Advocates for R-2 to 5.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**HON'BLE MR. JUSTICE TEJAS KARIA**

**JUDGMENT**

**TEJAS KARIA, J**

1. The Petitioner has filed the present petition challenging the order dated 23.12.2019 passed by the learned Debts Recovery Appellate Tribunal, Delhi ('**DRAT**') in Misc. Appeal No.340/2019 and order dated 02.04.2019 passed by the learned Debts Recovery Tribunal-II, Delhi ('**DRT-II**') in Securitisation Application No. 65/2019 ('**impugned orders**').



2. The Petitioner has assailed the impugned orders on the ground that the learned DRAT and DRT-II failed to consider that the Petitioner had made payment towards entire NPA amount to Respondent No.1 bank pursuant to letters dated 11.09.2015 and 23.03.2016. It is the Petitioner's case that she was neither a guarantor nor a mortgagor in respect of the property being the First Floor, C-140, Defence Colony, New Delhi-110024 (**'the property'**). Despite that, the Petitioner received a notice dated 16.02.2019 from a Court Receiver appointed by Respondent No.1 bank.

3. The Petitioner preferred a securitisation application against the said notice before the learned DRT-II. However, the learned DRT-II declined to grant interim relief *vide* order dated 02.04.2019 and directed Respondent No.1 bank to file the statement of account indicating the balance amount payable by the Petitioner. The said order was challenged by the Petitioner by way of an appeal before the learned DRAT.

4. Upon completion of pleadings, the appeal was argued on 29.10.2019 and 30.10.2019, during which the learned counsel for Respondent No.1 bank assured that the possession of the property would not be taken until the disposal of the appeal.

5. On 10.01.2020, the learned DRAT dismissed the appeal of the Petitioner. Subsequently, on 16.01.2020, the Petitioner received a notice from the Court Receiver, calling upon the Petitioner to vacate the said property and hand over possession in view of the dismissal of the appeal before the learned DRAT. On 18.01.2020, the Petitioner handed over possession of the property under protest.



6. Being aggrieved by the impugned orders and the actions of Respondent No.1 bank to take over the possession of the property, the Petitioner has filed the present petition, *inter alia*, praying for the following relief:

- a) Issue a writ of certiorari or any other appropriate writ/order/directions thereby quashing/setting aside the orders dated 23.12.2019 passed by Ld. DRAT, New Delhi and Ld. DRT-II, Delhi dated 02.04.2019 in appeal titled “*Mrs. Indu Narain vs State Bank of India & Ors.*” and other connected proceedings.
- b) Issue a writ of mandamus or any other appropriate writ/order/direction directing the Respondent Bank to return possession of the property being C-140, First Floor, Defence Colony, New Delhi-110 024 back to the Petitioner and to return the original title deed and execute all necessary documents such as No Objection Certificates etc. required to release the property completely in favour of the Petitioner.

**FACTUAL BACKGROUND:**

7. The Petitioner has submitted that the property in question was sold by Mr. B.K. Uppal to Late Shri Jagrit Khaitan and Smt. Mukta Khaitan (wife of Late Shri Jagrit Khaitan) in two halves, by way of two separate sale deeds dated 28.02.1997. The front half was transferred to Late Shri Jagrit Khaitan, while the rear half was transferred to Smt. Mukta Khaitan.

8. On 08.01.2006, notices under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security



Interest Act, 2002 ('**SARFAESI Act**') were issued against Late Shri Jagrit Khaitan and his wife, Smt. Mukta Khaitan as guarantors for availing loans by M/s. Chemico India (Respondent No. 2), M/s. Dass Transport Company (Respondent No. 3), M/s Jagannath Dudadhar & Sons (Respondent No. 4), M/s. Jagannath Dudadhar (Respondent No. 5) from State Bank of Mysore.

9. On 30.08.2007, Late Shri Jagrit Khaitan gifted his half portion of the property, namely the front half, to the Petitioner, who is the sister of Late Shri Jagrit Khaitan, by executing a gift deed. On 02.03.2009, possession notices under Section 13(4) of the SARFAESI Act were issued, seeking possession of the property. In 2009, four securitisation applications were filed by the Petitioner for and on behalf of Respondent Nos. 2 to 5, being the borrowers before the learned Debts Recovery Tribunal-III, Delhi ('**DRT-III**')

10. Following the demise of Shri Jagrit Khaitan, a Memorandum of Understanding/settlement was executed on 03.04.2013 among the members of his family, namely, his wife, Smt. Mukta Khaitan; his son Master Dhananjay Khaitan; his daughter, Smt. Mudita Jaipuriya; and the Petitioner. As per the aforesaid family settlement, the Petitioner was entrusted with the responsibility of negotiating and settling the entire dues of Respondent No.1 bank. It was also agreed that the rear half of the said property, belonging to Smt. Mukta Khaitan would remain free from all encumbrances. It was further agreed that the Petitioner would raise the requisite funds for payment to Respondent No.1 bank, obtain a No Dues Certificate, and secure the release and delivery of the original title deeds lying in the custody of State Bank of Mysore upon payment of its dues.



The Petitioner also undertook to pay a sum of ₹50,00,000/- to Master Dhanajay Khaitan towards his educational expenses.

11. It was also agreed that consequent to the Petitioner complying with her obligations under the family settlement, Smt. Mukta Khaitan, would transfer her rear half portion of the said property to the Petitioner.

12. The said understanding was also recorded by way of a Compromise Decree dated 12.04.2013, passed by this Court in CS (OS) No.580/2009. Pursuant to the Family Settlement dated 03.04.2013 and the Compromise Decree dated 12.04.2013, it was agreed that the front half portion of the said property, which had been mortgaged to State Bank of Mysore for securing a loan availed for the business of Respondent Nos. 2 to 5, and which had subsequently been gifted by Late Shri Jagrit Khaitan to the Petitioner, would be released in favour of the Petitioner upon the discharge of the outstanding dues of Respondent No.1 bank. It was further agreed that the Petitioner would also become the owner of the rear portion of the property upon its transfer by Smt. Mukta Khaitan. In the meanwhile, the securitisation applications were dismissed and in view of the said understanding, the Petitioner revived the four securitisation applications before the learned DRT-III, which was restored *vide* order dated 29.05.2013.

13. On 03.12.2013, the Petitioner offered to pay a sum of ₹1.65 cores to State Bank of Mysore, proposing to make an immediate payment of ₹10,00,000/-, with the balance to be paid in monthly instalments of ₹4,00,000/-. The said offer was duly recorded by the learned DRT-III, and the notices were issued to State Bank of Mysore seeking its response. As no objection was raised by Respondent No.1 bank to the Petitioner's



offer, the Petitioner made a payment of ₹10,00,000/- on 21.12.2013 and, thereafter, continued making monthly payment of ₹4,00,000/- from 11.01.2014 to 04.09.2015. All such payments were received by State Bank of Mysore.

14. On 03.07.2015, the Petitioner prayed before the learned DRT-III to grant a period of one year to pay the remaining balance, after adjusting the amount already paid, by way of ten equal monthly instalments ('EMI'), which was recorded by an order dated 03.07.2015. By September 2015, the Petitioner had deposited a sum of ₹1,06,00,000/-, leaving a balance of ₹58,23,092.63/- to be paid by the Petitioner through ten EMIs of ₹5,80,000/- by 03.07.2016.

15. As per the case of the Petitioner, in April 2016, after the closure of the financial year, the Petitioner approached State Bank of Mysore for the return of the original title deeds of the property. However, the representative of State Bank of Mysore assured the Petitioner that the said documents would be returned upon obtaining the requisite permission from their Circle Officer. Between June 2016 and July 2017, the Petitioner was attending to her husband, who had been diagnosed with prostate cancer, and was therefore unable to pursue the formalities with Respondent No.1 bank for the return of the original title deeds. In August 2017, the Petitioner's daughter, who was her only child, passed away unexpectedly. In the aftermath of this tragedy, the Petitioner did not pursue the matter with State Bank of Mysore. On 16.02.2019, the Petitioner received a notice from the Court Receiver of Respondent No.1 bank, which had by then taken over from State Bank of Mysore.



16. On 02.04.2019, the Petitioner preferred an appeal before the learned DRT-II against the notice received for taking over the possession of the property. However, the learned DRT-II declined the interim relief and directed Respondent No.1 bank to file the statement of account indicating the balance amount payable by the Petitioner in all four accounts.

17. Being aggrieved by order dated 02.04.2019, the Petitioner preferred an appeal before the learned DRAT. The said appeal was dismissed on 10.01.2020. On 16.01.2020, the Petitioner received a notice from the Court Receiver calling upon the Petitioner to remove her belongings and vacate the property on 18.01.20220 in view of the dismissal of the appeal before the learned DRAT. On 17.01.2020, the Petitioner and her husband protested against the taking over of possession by the Court Receiver of Respondent No.1 bank. However, on 18.01.2020, the possession of the property was taken over from the Petitioner.

18. In view of the above, the present petition has been filed challenging the impugned orders. The Petitioner has also prayed for directions against Respondent No.1 bank to return possession of the property to the Petitioner, to return the original title deed and execute all necessary documents to release the property in favour of the Petitioner.

19. *Vide* order dated 12.02.2020, which was modified *vide* order dated 19.02.2020, this Court had directed the parties to maintain *status quo*. The said interim order was extended during the pendency of the present petition by various subsequent orders.



20. At the hearing held on 15.12.2023, this Court had adjourned the matter to enable the parties to make an endeavour to amicably resolve the dispute and directed the Petitioner to meet the Regional Manager of Respondent No.1 bank to explore the possibility of an amicable settlement.

21. Pursuant to the said directions, the counsel for the Petitioner filed an affidavit dated 01.02.2024 placing on record the efforts made by the Petitioner to explore an amicable settlement. As per the said affidavit, the Petitioner sent several emails to the Regional Manager of Respondent No.1 and also had a meeting on 20.01.2024. It is stated in the affidavit that during the said meeting, the Regional Manager had informed the Petitioner that a modified statement of account would be shared, which was received by the Petitioner *via* email dated 30.01.2024. As per the said statement, an amount of ₹4,43,72,302.80/- was stated to be outstanding as of 31.01.2024. The email further stated that, considering the value of the property, the Petitioner was not entitled to any concession. The affidavit further records that when this Court had earlier directed the parties to explore the possibility of an amicable settlement, the outstanding amount stood at ₹2,11,80,976/-; however, the statement subsequently provided by Respondent No.1 bank reflected an amount more than double, thereby indicating that Respondent No.1 bank was not interested in settling the matter.

22. This Court, *vide* order dated 22.01.2025, recorded the statement of the learned counsel appearing for Respondent No.1 bank that a statement indicating the amount due in respect of four accounts in question, calculated on the basis of 13% simple interest on reducing balance



method, would be furnished. He further submitted that NPA amount as on 31.03.2025, be considered as principal amount and that any further payment made by the Petitioner would be adjusted towards interest calculated @13% simple interest on the reducing balance method.

23. Pursuant thereto, Respondent No.1 bank submitted a statement of account on 05.02.2025 showing that a total amount of ₹4,48,15,414.63/- was outstanding.

24. At the hearing held on 10.02.2025, the learned counsel for the Petitioner sought time to obtain instructions whether the Petitioner was agreeable to close the issue on basis of the statement of account furnished by Respondent No.1 bank.

25. On 20.02.2025, the Petitioner filed an application being CM APPL.12696/2025, stating that the Petitioner is a senior citizen and that, during the pendency of the present petition, her husband, who was suffering from cancer, had passed away. The Petitioner had approached Respondent No.1 bank for settlement of dues and since the Petitioner had no source of income, she sought the payment of dues of Respondent No.1 bank by sale of the property. It was also stated that Respondent Nos. 2 to 5, in their reply dated 22.09.2021, has taken a stand that, by virtue of the Family Settlement/MoU dated 03.04.2013 and the consequent decree dated 12.04.2013 passed in CS (OS) 580/2013 by this Court, Respondent Nos. 2 to 5 stood discharged, including the personal guarantees of Smt. Mukta Khaitan, wife of Late Shri Jagrit Khaitan. Accordingly, Respondent Nos. 2 to 5 in the present proceedings have taken a stand that they have no right, title, or an interest in the said property in terms of the



Family Settlement and decree, and it is for the Petitioner to pay the dues of the bank.

26. The application further states that during the meeting held on 13.02.2025, which was also attended by Smt. Mukta Khaitan, Respondent No.1 bank insisted that the legal heirs of Late Shri Jagrit Khaitan should provide their No Objection Certificate ('NOC') to the settlement proposal submitted by the Petitioner to the bank. Accordingly, the Petitioner, *vide* letter dated 21.02.2025, requested the legal heirs of Late Shri Jagrit Khaitan for NOC; however, no such NOC has been provided. Despite this, the Petitioner submitted her offer of settlement to Respondent No.1 bank on 21.02.2025 without the NOC of the legal heirs, proposing to pay ₹2,11,80,976.56/-, which was the amount payable after adjusting the payment of ₹1.65 crores made pursuant to the settlement filed on 18.04.2019, wherein Respondent No.1 bank had calculated the simple interest @13% per annum on reducing balance as full and final settlement of all the dues. The Petitioner further proposed that, since she did not have any other source of income, she would require Respondent No.1 bank to permit her to sell the property to generate the necessary funds to make a payment to Respondent No.1 bank. The application accordingly prayed for an appropriate order/direction directing Respondent Nos. 2 to 5 to issue NOC to the settlement proposal submitted by the Petitioner to Respondent No.1 bank.

27. At the hearing of this petition on 03.03.2025, the matter was heard finally on merits, as Respondent No.1 bank was not able to accept the settlement proposal submitted by the Petitioner.



## **SUBMISSIONS ON BEHALF OF THE PETITIONER**

28. Mr. M. Batta, the learned senior counsel appearing for the Petitioner submitted that Respondent No.1 bank has misused its powers by not accepting the settlement proposal of the Petitioner, which was contrary to its objective of providing financial assistance, and instead is acting in a manner akin to a dishonest money lender. It was further submitted that despite the Petitioner having cleared the entire dues of Respondent No.1 bank, the settlement was not accepted solely because the Petitioner could not obtain the NOC from the legal heirs of Late Shri Jagrit Khaitan, as Petitioner's husband was diagnosed with prostate cancer and death of her only child. Instead of sympathising with the Petitioner, Respondent No.1 bank was making every effort to usurp the property belonging to the Petitioner.

29. It was further submitted that, admittedly, the Petitioner was neither a borrower nor a guarantor for the loans given by State Bank of Mysore to Respondent Nos. 2 to 5 which were later taken over by Respondent No.1 bank. Despite this, Respondent No.1 bank took possession of the property of which the Petitioner is the absolute owner in terms of the Memorandum of Gift and an affidavit dated 22.02.2000 executed by Late Shri Jagrit Khaitan and Smt. Mukta Khaitan. It was categorically recorded in the documents executed by Late Shri Jagrit Khaitan that there was no lien, charge of whatsoever nature in respect of the property. Upon receiving a possession notice in 2009, the Petitioner became aware about the mortgage of the property and filed four securitisation applications being S.A. Nos. 121/122/123/124 of 2009. The Petitioner had also filed a suit before this Court, being CS (OS) No. 580/2009 against Late Shri



Jagrit Khaitan, Smt. Mukta Khaitan and State Bank of Mysore, claiming to be the owner and challenging the legality of the mortgage in respect of the property. During the pendency of the said suit, a settlement was reached on 03.04.2013, under which the front portion, i.e., 50% of the property was transferred in favour of the Petitioner by Late Shri Jagrit Khaitan. With respect to the rear portion of the property, i.e., remaining 50% of the property in the name of Smt. Mukta Khaitan, it was agreed that the Petitioner would settle the dues of Respondent No.1 bank and thereafter, Smt. Mukta Khaitan would transfer the 50% of rear portion of the property to the Petitioner, thereby making the Petitioner the absolute owner of the property. Accordingly, the suit was decreed in terms of the settlement *vide* order dated 12.04.2013.

30. It was submitted that pursuant to the decree, the Petitioner took steps to revive the securitisation applications before the learned DRT-III, which had earlier been dismissed for non-prosecution. The learned DRT-III *vide* order dated 29.05.2013, restored the said applications and directed Respondent No.1 bank to calculate simple interest @13% per annum from the date of NPA till the date of full realisation.

31. It was further submitted that during the hearing held on 03.12.2013 before the learned DRT- III, the Petitioner offered to pay the entire dues of ₹1.65 crores to Respondent No. 1 bank from her own sources, which was recorded in the order dated 03.12.2013 passed by the learned DRT-III. In the absence of any opposition, objection or denial to the said offer, the Petitioner made a payment of ₹10,00,000/- on 21.12.2013. Thereafter, the Petitioner made monthly payments of ₹4,00,000/-, which were received by Respondent No.1 bank between 11.01.2014 to 04.01.2015.



During the hearing on 03.07.2015, as Respondent No.1 bank insisted for expediting the payment, the Petitioner agreed to pay the balance amount ₹1.65 crores within one year, after adjusting the amount already paid by way of equal monthly instalments.

32. It was submitted on behalf of the Petitioner that Respondent No.1 bank offered that if the Petitioner tendered the entire outstanding of ₹58,23,092.63/- within the ensuing financial year i.e., 31.03.2016, no further amount would be carried over to the next financial year. Accordingly, the Petitioner paid the entire amount of ₹58,23,092.63/- by 23.03.2016 instead of 03.07.2016. It was further submitted that Respondent No.1 never claimed or stated that any amount over and above ₹58,23,092.63/- was either due or payable.

33. It was submitted on behalf of the Petitioner that the aforesaid understanding was reflected in the subsequent exchange of correspondence between the Petitioner and Respondent No.1 bank, in letters dated 11.09.2015, 21.03.2016 and 22.03.2016 explicitly stated the outstanding amount confirming the balance sum due and payable by the Petitioner. It was further submitted that the Respondent No. 1 bank's acceptance and acknowledgment of the understanding that no further amount was due and payable by the Petitioner was evident from its conduct, as no further demand for payment was raised after the Petitioner paid the amount of ₹1.65 crores.

34. It was submitted that upon payment of the entire dues, the Petitioner approached Respondent No.1 bank for the return of the title documents of the property. However, Respondent No.1 bank delayed the return of the title documents on the pretext that requisite permission from



the Circle Officer was required. It was further submitted that during this period, the Petitioner was occupied with her husband's cancer treatment and also suffered the untimely demise of her only child. Due to these setbacks, the Petitioner did not actively pursue the completion of formalities for return of the original title deeds of the property under the *bonafide* belief that Respondent No.1 bank would act ethically and honour the terms of the settlement.

35. It was submitted that after a lapse of almost three years, the Petitioner received a notice on 16.02.2019 from Respondent No. 1 bank demanding the final balance payment.

36. In view of the above, the learned senior counsel for the Petitioner submitted that the petition deserves to be allowed and that the property be released by Respondent No.1 bank.

37. The learned senior counsel for the Petitioner has relied upon the decision of the Hon'ble Supreme Court in *Lala Kapurchand Godha & others v. Mir Nawab Himayatali Khan Azamjah* AIR 1963 SC 250 wherein it is held that once a party accepts payment from a third person in full satisfaction of its claim, the said party not entitled to recover the balance amount in view of Sections 41 & 63 of the Indian Contract Act, 1872.

38. He further relied on the decision in *M/s. Hari Chand Madan Gopal & others v. State of Punjab* (1973) 1 SCC 204, which held that under Section 63 of the Contract Act, 1872, a promisee cannot remit a promise in part and it was not necessary that such remission should be supported by consideration. It was held that when the Government decided to recover only 40% and no more, the Government's decision



would amount to remitting a part of the debt and it was not necessary that such remission should be supported by consideration under Section 63 of the Contract Act, 1872. In the circumstances, it was held that the Government cannot seek to recover more than 40% and nothing was due and payable by the appellant in that case.

39. The learned senior counsel for the Petitioner relied upon the case of the *Central Bank of India, Plaintiff v. Guruviah Naidu and Sons (Leather) Pvt. Ltd.* AIR 1992 Madras 139, which held that the plaintiff bank was not entitled to claim overdue interest when the parties had entered into an agreement subsequent to filing of the suit to supersede the liability and the entitlement, which was squarely covered within the ambit of Section 63 of the Indian Contract Act, 1872. It was held that where there has been true accord under which the creditor agrees to accept a lesser sum in satisfaction of a debt, and the debtor, acting upon that accord, pays the lesser sum which the creditor accepts, it is then inequitable for the creditor to insist afterwards for the balance. It was submitted that under the principle of promissory estoppel, once an accord is reached between the parties to accept the amount in full discharge, it was not open for the bank to claim overdue interest.

40. Relying on the aforesaid decisions, the learned senior counsel for the Petitioner has submitted that once the Petitioner paid the amount of ₹1.65 cores, and the same was accepted by Respondent No.1 bank, no further amount was due and payable by the Petitioner to Respondent No.1 bank.



## **SUBMISSIONS ON BEHALF OF RESPONDENT NO.1**

41. The learned counsel for Respondent No.1 submitted that no settlement was arrived at between the Petitioner and Respondent No.1 bank despite opportunity granted by the learned DRT-III *vide* order dated 17.12.2012. Accordingly, the learned DRT-III *vide* order dated 15.02.2013 had vacated the interim order and Respondent No.1 was permitted to take action against the property under SARFAESI Act.

42. Accordingly, Respondent No.1 bank issued possession notices dated 13.04.2013 in accordance with Section 13(4) of the SARFAESI Act. The Petitioner objected to these notices before the learned DRT-III, which, *vide* order dated 29.05.2013, granted the Petitioner two months' time to find a better buyer for the property and present the same before the authorized officer of Respondent No.1 bank. Respondent No.1 bank was to consider the offer in accordance with law and release the charge on the property if the dues were satisfied. It was further submitted on behalf of Respondent No.1 bank that the Petitioner failed to comply with the order dated 29.05.2013 and sought further time to find a better buyer to fetch the maximum market price of the property and to restrain Respondent No.1 bank from proceeding further under the SARFAESI Act. The learned DRT-III rejected this request *vide* order dated 09.10.2013, observing that sufficient time had already been granted to the Petitioner but the same was not complied with.

43. It was further submitted that the Petitioner filed further application dated 06.11.2013 seeking review of the order dated 09.10.2013 and sought further time of six weeks to clear the outstanding liability towards Respondent No.1 bank. *Vide* order dated 08.04.2015, the learned DRT-III



directed the Petitioner to submit a definite payment schedule by way of an affidavit by 03.07.2015. Subsequently, on 03.06.2015, the learned DRT-III granted extension of one year to the Petitioner for paying the entire dues in ten equal monthly instalments, failing which Respondent No.1 bank would be at liberty to proceed against the property in accordance with law.

44. It was further submitted on behalf of Respondent No.1 bank that in terms of the order dated 03.07.2015, the Petitioner was required to make payment of entire dues, i.e., the NPA amount as on 31.03.2005 alongwith interest and other charges accrued from 01.04.2005 till actual realisation, within a period of twelve months through ten equal monthly instalments.

45. It was submitted that pursuant to the order dated 03.07.2015, the Petitioner paid an amount of ₹1,31,00,000/- starting from 20.06.2013 to 06.02.2016. It was further submitted that the Petitioner had never claimed that there was any settlement, and there was no proposal given by the Petitioner. It was never claimed by the Petitioner that any proposal for settlement was accepted by Respondent No.1 bank at any point of time. In fact, the Petitioner had admitted and agreed that she would clear the entire dues of Respondent No.1 bank in terms of orders dated 29.05.2013 and 03.07.2015, and she had tendered partial amounts in compliance with the said orders. It was submitted that it was for the first time in 2019 that the Petitioner claimed that there was a settlement and that Respondent No.1 bank would not take the possession of the property.

46. It was further submitted on behalf of Respondent No.1 bank that, as per RBI guidelines, Respondent No.1 bank cannot add the accrued interest and other debit charges to NPA accounts after their declaration as



NPA on 31.05.2006. Therefore, the balances in such NPA accounts remained static, and the amounts of such balances varied only upon receipt of partial payments. It was submitted that the letters dated 11.09.2015, 21.03.2016 and 23.03.2016, issued by Respondent No.1 bank, informed the Petitioner about the NPA balances after appropriation of the partial receipts, as stated in the respective tables of the respective letters, and that the said amounts represented only the amounts payable by the Petitioner. However, the said letters did not state that there was any settlement with the Petitioner, nor that any proposal for settlement had been made by the Petitioner. It was submitted that the Petitioner had paid partial amounts in compliance with the orders dated 29.05.2013 and 03.07.2015, which were received by Respondent No.1 bank pursuant to the said orders, and not on account of any settlement between the Petitioner and Respondent No.1 bank. It was further submitted that there was no mention in any of the letters sent by the Petitioner from 2014 to 2016 along with part payments of the dues regarding any settlement or One Time Settlement ('OTS') with Respondent No.1 bank.

47. It was further submitted that the Petitioner had never requested the issuance of a No Dues Certificate or the release of the mortgage over the property and/or the release of the original title deeds of the property, as the Petitioner was well aware that she had no right to claim the same due to non-compliance with the orders passed by the learned DRT-III and non-payment of the entire dues of Respondent No.1 bank within the time granted by the learned DRT-III. It was further submitted that Respondent No.1 bank is an institution and does not operate orally; every transaction with Respondent No.1 takes place strictly in writing. Therefore, it is



beyond imagination that Respondent No.1 bank would have entered into any settlement/OTS with the Petitioner orally, in contravention of the bank procedures.

48. In view of the same, Respondent No.1 bank has prayed for the dismissal of the petition.

### **ANALYSIS AND FINDINGS**

49. The main issue in this petition relates to whether there was any settlement agreement or OTS between the Petitioner and Respondent No.1 bank for the payment of dues of the four loan accounts of Respondent Nos. 2 to 5. It is not in dispute that the Petitioner was recognized by Respondent No.1 bank as the borrower in place of Respondent Nos. 2 to 5, in view of various orders passed by the learned DRT-III and the correspondence exchanged between the Petitioner and Respondent No.1 bank. Admittedly, the Petitioner has relied upon the orders passed by the learned DRT-III, especially the order dated 29.05.2013 to submit that pursuant to the judgment and decree dated 12.04.2013 passed by this Court in CS (OS) 580/2009, the Petitioner was recognized by the learned DRT-III as having a right over the property and the securitisation applications filed by the Petitioner were restored. The Petitioner had also undertaken to clear the entire dues of Respondent No.1 bank within a period of six to nine months by bringing a better buyer for the property and to show her *bona fides* she had agreed to deposit a sum of ₹10,00,000/- with Respondent No.1 bank. In view of that undertaking, the learned DRT-III had observed that no fruitful purpose would be served in dragging the matter when the Petitioner had come forward to clear the dues of Respondent No.1 bank and bring an



end to the litigation. Accordingly, the learned DRT-III had granted two months' time to the Petitioner to bring a better buyer before the authorised officer of Respondent No.1 bank and if the dues were cleared, Respondent No.1 bank was directed to consider releasing the property in favour of the Petitioner in accordance with law.

50. The order dated 29.05.2013 passed by the learned DRT-III also made it clear that in the event the Petitioner failed to bring a better buyer, Respondent No.1 bank shall be at liberty to initiate the process of sale under the SARFAESI Act. However, the said order dated 29.05.2013 was not complied with by the Petitioner. The Petitioner again approached the learned DRT-III seeking an extension of time due to the market condition to bring a better buyer. The Petitioner had undertaken to pay the entire dues of Respondent No.1 bank to the tune of ₹1.65 crores in respect of all four accounts. Accordingly, *vide* order dated 03.12.2013, the learned DRT-III had passed an *ex parte* order restraining Respondent No.1 bank from taking any measures under the SARFAESI Act for the sale of the property.

51. However, the Petitioner was not able to find any buyer for the property and, therefore, requested the learned DRT-III to grant further time of one year to pay the entire dues of Respondent No.1 bank in instalments. *Vide* order dated 03.07.2015, the learned DRT-III granted one year's time to the Petitioner to deposit the entire dues in ten equal monthly instalments. The Petitioner has also relied upon the letters dated 11.09.2015, 21.03.2016 and 23.03.2016 to contend that Respondent No.1 bank had agreed to the total dues payable by the Petitioner as stated in the said communications.



52. A careful consideration of the orders dated 29.05.2013, 03.12.2013 and 03.07.2015 passed by the learned DRT-III clearly shows that there was no reference to any settlement proposal/OTS or any agreement by Respondent No.1 bank to accept any particular amount of ₹1.65 crores as full and final settlement of the outstanding dues payable by the Petitioner. In fact, these orders record clear undertaking of the Petitioner to pay all dues of Respondent No.1 bank. The amount of ₹1.65 crores is mentioned only in the order dated 03.12.2013, which was recorded as a statement of the counsel on behalf of the Petitioner, with no appearance on behalf of Respondent No.1 bank at the said hearing. Hence, the contention of the Petitioner that by not opposing the said statement, Respondent No.1 bank had accepted to settle the entire outstanding dues at ₹1.65 crores, is without merit. Notably, there was no mention of the amount of ₹1.65 crores in the subsequent order dated 03.07.2015, wherein the Petitioner had once again undertaken to pay the entire dues of Respondent No.1 bank and merely sought an extension of time of one year, which was granted by the learned DRT-III. Even a perusal of the letters dated 11.09.2015, 21.03.2016 and 23.03.2016, clearly shows that Respondent No.1 bank only provided the details of the outstanding balance as on the date of respective letters. This indicates that Respondent No.1 bank had never agreed to accept the amounts mentioned therein as full and final settlement, as is now claimed by the Petitioner. In view of the same, the judgements relied upon by the Petitioner with reference to Sections 41 and 63 of the Contract Act, 1872 would not be applicable to the facts of the present case, as there is no communication from Respondent No. 1 bank or any order passed by the learned DRT-III that records that



Respondent No.1 bank had agreed to settle all the outstanding dues for ₹1.65 crores. In the absence of any such agreement or acceptance by Respondent No.1 bank, Sections 41 and 63 of the Contract Act, 1872 would not be attracted in the present case.

53. There is nothing on record to show that the Petitioner ever approached Respondent No.1 bank for the return of the original title deeds of the property. Hence, the averments made in the petition and the oral submissions at the time of hearing are not borne out from any contemporaneous documentary evidence available on record to show that the Petitioner had ever approached Respondent No.1 bank for the return of the original title documents of the property. Hence, the averment by Respondent No.1 bank, both in its reply affidavit and during the oral hearing that there was no communication or request from the Petitioner for the return of the original title deeds, appears to be correct.

54. In the absence of any agreement by Respondent No.1 bank to accept a settlement proposal or OTS, this Court cannot direct Respondent No.1 bank to accept any proposal submitted by the Petitioner for settlement/ OTS of the outstanding dues.

55. This Court has provided sufficient opportunity to the Petitioner to arrive at a settlement with Respondent No.1 bank on mutually agreeable terms. Despite that the parties have been unable to arrive at a mutual agreement to settle.

56. In view of the same, Respondent No.1 bank is entitled to proceed with the sale of the property and recover all its up-to-date dues, payable by the Petitioner on behalf of Respondent Nos. 2 to 5, from the sale proceeds of the property.



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57. Accordingly, the interim relief granted by this Court *vide* orders dated 12.02.2020 and 19.02.2020 is hereby vacated. Respondent No.1 bank is at liberty to proceed with the sale of the property in accordance with the provisions of the SARFAESI Act and recover the outstanding dues from the sale of the property. It is clarified that in the event any surplus amount remains available after recovery of the entire dues and applicable charges, Respondent No.1 bank shall remit the balance amount to the Petitioner.

58. Accordingly, the present petition is dismissed with above directions. There shall be no order as to costs. All pending applications also stand disposed of.

**TEJAS KARIA, J**

**VIBHU BAKHRU, J**

**May 27, 2025/ 'A'**