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

*Date of decision: 21.02.2025*

+ W.P.(C) 6766/2024  
CAPT RAMINDER SINGH WADHWA .....Petitioner  
Through: Lt. Col. P. K. Saran (Retd.),  
Advocate.  
versus  
AXIS BANK LIMITED AND ORS. ....Respondents  
Through: Mr.Ramesh Singh, Senior Advocate  
with Mr.Anupam Singh & Ms.Hage  
Nanya, Advocates for R-1.  
Mr.Rishi Manchanda, Mr.Siddharth  
Mullick & Mr.Lakhan, Advocates for  
R-2 to 5.  
Mr.Ayush Puri, Mr.Sultan Haider  
Jafri & Mr.Kanav Madnani,  
Advocates for R-12.

**CORAM:**  
**HON'BLE MS.JUSTICE REKHA PALLI**  
**HON'BLE MS.JUSTICE MANMEET PRITAM SINGH ARORA**

**REKHA PALLI, J (ORAL)**

**CM APPL. 42724/2024 (directions)**

1. This is an application filed by the respondent no.2 seeking to deposit the balance sum of Rs.90 lakhs, which was payable to the respondent no.1/ bank in terms of the One Time Settlement (hereinafter "the OTS") entered



into between the respondent no.1/ bank and the respondent no.2 on 31.05.2023.

2. At the outset, we may note the brief factual matrix as is necessary for deciding the present application.

3. The respondent nos. 2 to 5 were in November, 2006 sanctioned a loan of Rs.4.25 crores out of which a sum of Rs.4 crores was released to them on 22.12.2006. The said home loan was sanctioned for buying plot no. A-1/303, Safdarjung Enclave, New Delhi-110029 along with superstructure standing thereon ('Plot No. A-1/303').

4. By utilizing this loan amount, the respondent nos. 4 and 5 purchased plot no. A-1/303 on 27.12.2006 and consequently, the said plot stood mortgaged with respondent no. 1/ bank. The respondent nos. 4 and 5 thereafter entered into a collaboration agreement dated 17.01.2007 with the respondent no. 6 for construction of a new building after demolishing the existing structure. It was proposed that the new building would be constructed, with a basement, ground, first, second and third floor. In accordance with aforesaid collaboration agreement, a new building was constructed by December 2007.

5. Though, the aforesaid home loan amount of Rs.4.25 crores was to be repaid to the respondent no.1/bank in pre-determined installments, the respondent nos. 2 to 5 started defaulting from July 2007 itself but the respondent no.1 instead of taking any action against them, continued to accept belated payment of installments alongwith interest from them. It was only on 21.11.2020 that the loan account of the respondent nos. 2 to 5 was declared as a Non-Performing Asset (hereinafter "the NPA"). It was after yet another two years, that the respondent no.1 initiated action against the



respondent nos.2 to 5 under the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereinafter “the SARFAESI Act”)

6. By the time the respondent no.1 initiated action in the year 2022 against the respondent nos. 2 to 5 under the SARFAESI Act, the said respondents had already sold the five floors of the building constructed in 2007 to different persons, who all took loans from different financial institutions and mortgaged their respective floors to the said institutions. The basement and the ground floor having been sold to the petitioner and his wife on 21.11.2011, said floors stand mutated in the records of the competent authority in their favour on 30.03.2012. As the petitioner had availed of loan to purchase the said property, a security interest in favor of HDFC Bank was created in respect of these two floors on 24.11.2011.

7. Similarly, the first floor was sold to the respondent no. 12 on 29.04.2008 and the said floor stands mutated in favor of respondent no. 12 on 18.07.2008 as per the records of the competent authority. As per the terms of the collaboration agreement on 12.06.2008, the second floor of the property was sold by the developer i.e. respondent no. 6 to one, Mrs. Debla Devi, by way of a registered sale deed, who in turn, sold the same to Mrs. Manju Devi and Mr. Vipin Kumar Jain on 16.06.2015. This second floor was thereafter sold by Mrs. Manju Devi and Mr. Vipin Kumar Jain to respondent no. 8 herein vide sale deed dated 24.02.2020 and consequently, the property stands mutated in his name as per the municipal records. It may be noted that like the petitioner, the respondent no. 8 had also availed of loans against this floor from PNB Housing Finance Ltd. and Bank of Baroda in January 2020 and December 2021, respectively.



8. Like the other floors, the third floor was also sold by respondent nos. 4 and 5, the said purchaser, Mr. Dakshesh I. Shroff, who had availed of a loan against the said floor from State Bank of Travancore, had defaulted in repayment of loan which in fact led to the said third floor being sold in auction sale under the SARFAESI Act, wherein the respondent no. 11 purchased the said floor and was issued a certificate of sale on 20.03.2017 by the State Bank of Travancore.

9. As noted hereinabove, the respondent no. 1 had declared the loan account of respondent nos. 2 to 5 as an NPA on 21.11.2020. Soon thereafter, respondent no. 1 upon learning about the mortgaged property having been sold to different buyers, made a complaint with the Economic Offences Wing (EOW), Delhi against respondent nos. 2 to 5, leading to registration of FIR No. 195/2021 against them on 17.12.2021. Since the respondent no. 1 had, after declaring the loan account of respondent nos. 2 to 5 as NPA, also initiated action under the SARFAESI Act against the entire mortgaged property on 02.07.2022, yet another FIR, being FIR No. 62/2024 dated 15.03.2024, was registered against them at PS Safdarjung Enclave, this time at the instance of the petitioner and respondent no. 12.

10. Faced with the action initiated by the respondent no. 1, the respondent nos. 2 to 5 arrived at an amicable settlement in the form of OTS for a sum of Rs.1.30 crores, which amount was to be paid by way of six installments as detailed hereinunder:-



Sr. No.	Mode of Payment	Bank Name	Branch	Instrument No.	Date	Amount (Rs)
1	Cash/Cheque/DD/Account transfer	-	-	-	31-May-23	30,00,000
2	Cash/Cheque/DD/Account transfer	-	-	-	20-Jun-23	20,00,000
3	Cash/Cheque/DD/Account transfer	-	-	-	20-Jul-23	20,00,000
4	Cash/Cheque/DD/Account transfer	-	-	-	20-Aug-23	20,00,000
5	Cash/Cheque/DD/Account transfer	-	-	-	20-Sept-23	20,00,000
6	Cash/Cheque/DD/Account transfer	-	-	-	20-Oct-23	20,00,000
Total						1,30,00,000

11. The respondent nos. 2 to 5 however paid only a sum of Rs.40 lakhs and that too in 7 staggered installments, which were paid between 31.05.2023 to 31.07.2023 and, therefore, an amount of Rs.90 lakhs under the OTS remained unpaid. It is the case of the respondent nos. 2 to 5 that this default in payment was on account of sudden diagnosis of the respondent no. 2 with cancer. At this stage, all the subsequent purchasers being threatened with dispossession at the behest of respondent no. 1 on account of the proceedings initiated under the SARFAESI Act, initiated action to safeguard their interests, with the respondent no. 11 approaching the Debt Recovery Tribunal (“DRT”), wherein learned DRT granting interim protection to him on 13.03.2024. Similarly, the respondent no. 8 approached the DRT and



thereafter the Debt Recovery Appellate Tribunal (“DRAT”), and vide order dated 14.03.2024, was granted an interim stay by the learned DRAT.

12. However, the applications preferred by the petitioner herein, i.e., the purchaser of the basement and the ground floor as also by respondent no. 12, the purchaser of the first floor of the suit property, were dismissed by the DRT and the DRAT, leading to the filing of two writ petitions by the petitioner, i.e., the present petition and W.P. (C) 13552/2024, and one writ petition being W.P.(C) 6497/2024 by the respondent no. 12, Ms. Raksha Sehgal. While the present writ petition was dismissed on 01.06.2024, W.P.(C)6497/2024 preferred by the respondent no. 12 was disposed of on the same date by taking on record her settlement with the respondent no.1/bank to pay a sum of Rs 54,35,637/-, which amount we are informed have been received by the respondent no.1.

13. However, even though the present writ petition already stood dismissed, the original borrowers, i.e., the respondent no. 2 to 5 then filed the captioned application on 25.07.2024 seeking permission to deposit Rs.90 lakhs due and payable to the respondent no. 1 bank as per the OTS dated 31.05.2023. To show its *bona fide*, the respondent no. 2, alongwith the application, annexed copies of demand drafts for a total sum of Rs.70 lakhs in favor of respondent no. 1.

14. Upon consideration of this application, this Court vide its order dated 30.07.2024, while directing learned counsel for the respondent no. 1/bank to obtain instructions as to whether the offer of the respondent no. 2 to pay the balance outstanding amount towards OTS alongwith interest could be accepted, simultaneously issued directions to the respondent no. 2 to pay a sum of Rs.40 lakhs to the respondent no. 1/bank as also to deposit a sum of



Rs.30 lakhs with the Registrar General of this Court. This Court while granting time to respondent no. 1/bank to obtain instructions issued interim directions restraining respondent no. 1/bank from taking any coercive actions pending the final disposal of the present application.

15. This interim order was thereafter continued from time to time during which period the Special Leave Petition challenging the order dated 01.07.2024 vide which the present writ petition was dismissed also stands rejected by the Apex Court.

16. In support of the application, learned counsel for the petitioner, respondent nos. 2 to 5 and respondent no. 12 have urged that an amount of Rs.1,34,35,637/- already stands paid to the respondent no. 1 and therefore, there is no reason as to why the respondent no. 1 bank should not be made to abide by the terms of its OTS. They have also urged that the bank can be easily compensated for the slight delay in compliance with the conditions of the OTS by payment of interest @10% p.a. from the date of the default in making payments in terms of the OTS, as the amount payable under the OTS though liable to be paid by 20.10.2023 was ultimately paid by 02.09.2024. It is their claim that the total amount as per the OTS, alongwith interest @10% p.a., works out to Rs.1,38,61,589/-. They have assured this Court that they will forthwith pay the differential amount of Rs.4,25,952/- to fulfill the obligations under the OTS.

17. The respondent nos. 2 to 5 have also placed on record a copy of the settlement agreement vide which they have agreed that the sum of Rs 30 lakhs deposited with this Court be released in favor of respondent no. 12. They have also, in order to compensate the respondent no. 12 for having paid the sum of Rs.54,35,637/- to respondent no. 1 bank on 01.06.2024,



handed over to him two post-dated cheques bearing no. 000001 dated 22.04.2025 and no. 000002 dated 12.05.2025 for Rs.12,35,637/- and Rs.12,00,000/-, respectively. The respondent no. 12 has also agreed that she will cooperate with the respondent nos. 2 to 5 in quashing of FIR 62/2024 registered against them. Simultaneously, the petitioner has agreed that he will cooperate with the respondent nos. 2 to 5 in quashing of FIR 62/2024 registered against them, on the basis of his complaint. Accordingly, the petitioner, the respondent nos. 2 to 5 & 12 have, in unison prayed that the application be allowed by binding the respondent no. 1 bank to the OTS and directing the bank to withdraw all coercive action initiated against the parties in respect of the suit properties.

18. On the other hand, Mr. Ramesh Singh, learned senior counsel for the respondent no. 1 bank while not denying that the amount under the OTS has already been received by the bank, albeit belatedly, has urged that taking into account the admitted position that the respondent nos. 2 to 5 had failed to abide by the terms of the OTS, the respondent no.1 is justified in reviving its demand for a sum of Rs.2.80 crores which includes compound interest in terms of the contract between the parties. He has, therefore, contended that respondent no.1 bank ought not to be directed to accept OTS, at his belated stage and therefore, prayed the application be dismissed

19. Having considered the submissions of learned counsel for the parties and perused the record, we may begin by noting the tabulation furnished by the respondent no. 12 which shows that payments totaling Rs.1.30 crores were made to the respondent no. 1 bank between 31.05.2023 and 02.09.2024. The tabulation further shows that if the bank is paid interest @



10% p.a. for the delay in payment of the OTS, then the total amount of OTS payable with interest would be Rs. 1,38,61,589/-. The same reads as under:-

<b>Interest Calculations</b>					
<b>Amount</b>	<b>Date of Actual Payment</b>	<b>Date of expected Payment as per OTS</b>	<b>No. of days of delay</b>	<b>Interest @ 10%</b>	
30,00,000	31 May 23	31 May 23	0	0	
2,00,000	30 Jun 23	20 Jun 23	10	547.945	
3,00,000	01 Jul 23	20 Jun 23	11	904.11	
5,00,000	31 Jul 23	20 Jun 23	41	5,616.438	
10,00,000	31 Jul 24	20 Jun 23	407	1,11,506.849	
20,00,000	31 Jul 24	20 Jul 23	377	2,06,575.342	
10,00,000	31 Jul 24	20 Aug 23	346	94,794.521	
10,00,000	31 Jul 24	20 Aug 23	346	94,794.521	
20,00,000	31 Jul 24	20 Sep 23	315	1,72,602.74	
20,00,000	02 Sep 24	20 Oct 23	318	1,74,246.575	Yet to deposit
<b>1,30,00,000</b>				<b>8,61,589.041</b>	
Total due to Bank				<b>1,38,61,589.041</b>	
Payment received by bank from borrowers				<b>80,00,000</b>	
Payment received by bank from Raksha Sehgal				<b>54,35,637</b>	
Total payment received by bank				<b>1,34,35,637</b>	
Balance Payment to be paid by borrowers to Axis Bank				<b>4,25,952.041</b>	
Amount to be paid Borrowers to Raksha Sehgal				<b>54,35,637</b>	
Amount already deposited with Registrar, High Court				<b>30,00,000</b>	
Money to be brought in by Borrowers payable to Raksha Sehgal				<b>24,35,637</b>	
Total additional money to be brought in by borrowers				<b>28,61,589.041</b>	



20. From the aforesaid, what emerges is that the respondent no. 1 bank would be entitled to a further differential amount of Rs.4,25,952/- to fulfill the terms of the OTS, by taking into account interest @ 10% p.a. for the delay in payment of the amount under the OTS. We may also note that the main original borrower respondent no. 2, who it is claimed could not make the payment of the full amount payable under the OTS by 20.10.2023 as he was diagnosed with cancer, has succumbed to cancer, and passed away on 19.11.2024 and his legal heirs have been brought on record.

21. Now coming to the respondent no.1's opposition to the application, we are of the view that even though the learned senior counsel for respondent no.1 is correct in urging that no financial institution can generally be compelled to accept the OTS once the party has failed to abide by its specific terms, the facts of this case reveal that it is the respondent no. 1 bank itself which due to its inaction and negligence has led to this situation where the mortgaged property against which the respondent nos. 2 to 5 had availed of a loan in 2006, had changed hands with various innocent parties having invested huge amounts in buying different floors of the said property. Despite our repeated queries, learned senior counsel for the respondent no.1 bank had no justification as to why no action was initiated against the original borrowers from 2007 to 2022, when admittedly they had defaulted in making payment towards the EMIs in 2007 itself.

22. Learned counsel for the respondent no. 1 has also not disputed that the names of all subsequent purchasers have been duly recorded by the concerned land-owning agencies without any demur from the respondent no. 1/bank, which claims that the property was already mortgaged to it in the year 2006. We cannot also lose sight of the fact that the respondent no.



1/bank itself had agreed to accept a sum of Rs.1.30 crores, subject to the same being paid before 20.10.2023, out of which a sum of Rs.40 lakhs was paid within time with the remaining amount being paid before 02.09.2024. In these circumstances, the question before this Court is as to whether the innocent purchasers should be made to suffer only on account of the conduct of the respondent no. 1/bank. The answer, in our considered view, is a clear no.

23. It is evident that the respondent no.1/ bank had failed to safeguard its right under the loan agreement and the SARFAESI Act by not initiating appropriate steps against the respondent no. 2 to 5 in a timely manner leading to the petitioner, the respondent nos. 8, 11 & 12, who are subsequent purchasers of the suit property having parted with valuable consideration to acquire rights in the property. We find that the respondent no.1 had, as late as on 31.05.2023, entered into the OTS with the respondent nos. 2 to 5 whereunder these respondents were required to pay a total sum of Rs.1.30 crores in seven installments. Further, the respondent no. 1 had already received a sum of Rs.40 lakhs well before the cutoff date of 12.10.2023 prescribed under the OTS. We are, therefore, of the considered view that this is a fit case where the respondent no.1 despite the slight delay on the part of the respondent nos.2 to 5 in complying with the conditions of the OTS ought to be directed to abide by the terms of the OTS and accept the agreed sum of Rs.1.30 crores with interest @ 10% p.a. from the date of default qua the due dates of the respective installments as per the OTS. This amount, it is the common case of the parties, would, as per the tabulation noted hereinabove, works out to Rs.1,38,61,589.41/-, out of which a sum of Rs.1.34 crores has already been received by the respondent no. 1/bank.



24. The application is, accordingly, allowed by directing that upon receipt of the differential sum of Rs.4,25,952.041/- by the respondent no. 1/bank within three days, the loan account of the respondent nos. 2 to 5 would stand closed by way of OTS. Consequently, all proceedings under the SARFAESI Act initiated by respondent no. 1 in respect of suit property would stand quashed. The respondent no. 1/bank shall return the original title documents deposited with it to the respondent nos. 2 to 5, who will hold them in trust and in turn hand over the said original documents to the petitioner, the respondent nos. 8, 11 & 12 as per mutual understanding arrived between the parties. This would, however, be subject to the respondent nos. 2 to 5 paying the differential sum of Rs.4,25,952.041/- to the respondent no.1 within three days. We make it clear that though it will be open for the respondent nos.2 to 5 to pay this amount to respondent no. 1 by taking assistance from the petitioner, the respondent nos.8, 11 & 12, who are all interested in retaining the property, the said amount would be returned to them within 2 months. Further, the respondent nos. 2 to 5 will abide by all their obligations, as per the settlement agreement dated 21.02.2025 to return the amount paid by the respondent no. 12 to the respondent no. 1/bank in terms of the post-dated cheques detailed hereinabove in paragraph no. 16.

25. In the light of the aforesaid, we also direct the Registry to release the sum of Rs.30 lakhs deposited by the respondent no. 2 to the respondent no.12, alongwith the accrued interest thereon.

26. Needless to state, the petitioner, and the respondent nos. 1 & 12 will cooperate with the respondent nos. 2 to 5 in quashing of criminal proceedings initiated against them. While disposing of the application in the



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aforesaid terms, we make it clear that this order has been passed in the peculiar facts and circumstances of this case.

**REKHA PALLI**  
**(JUDGE)**

**MANMEET PRITAM SINGH ARORA**  
**(JUDGE)**

**FEBRUARY 21, 2025**  
mt/mg/bs