

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

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CWP-24449-2022 (O&M)

Date of decision : 12.05.2025

M/s Colour Cottex Pvt. Ltd. and another**... Petitioners****Versus****Indian Bank****...Respondent****CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Mr. Pankaj Gupta, Advocate for the petitioners.

Mr. Gaurav Goel, Advocate for the respondent-Bank.

Anupinder Singh Grewal, J. (Oral)

The petitioners have filed this petition seeking direction to the respondent-Bank to consider the request of the petitioners dated 13.09.2022 (Annexure P-9) and grant an extension of nine months to pay the balance dues as per the OTS letter dated 01.02.2021(Annexure P-7).

2 Learned counsel for the petitioners submits that vide letter dated 27.02.2020 (Annexure P-4) the respondent-Bank granted sanction to the OTS proposal for a sum of Rs.50 crores and agreed to release only those mortgaged properties for which the Bank has received 63% of the value so that the petitioners could sell them and repay the balance dues. He further submits that as per Section 62 of the Contract Act, every One Time Settlement (OTS) agreement is a fresh independent contract between the borrower (petitioners) and the secured creditor. Moreover, when the last date by which the payment has to be made has not been specified, it was open to the borrower (petitioners) to have made the payment as per the terms and conditions as specified in the letter dated 01.02.2021 (Annexure



P-7). In the aforesaid letter, it was mentioned that the payment could be made beyond 31.03.2021 along with simple interest @ 12.25% per annum on the reducing balance. He submits that in view of Covid-19 pandemic, the Bank had earlier, on multiple occasions, granted extension of time to the petitioners to make the payment of the balance amount as per the latest OTS and had also revised the terms and conditions. However, later without any justifiable cause they had cancelled the OTS. He also submits that the Bank had released some properties after part payment as per the terms and conditions of the OTS and, therefore, it could not have unilaterally cancelled the same without any justifiable cause. There was an error on the part of the respondent-Bank as well, as they had failed to release the mortgaged properties on time due to which it was difficult for the petitioners to repay the balance OTS amount.

3. Learned counsel for the respondent-Bank while referring to the written statement dated 20.04.2023 submits that despite multiple opportunities, the petitioners had failed to pay the entire amount in terms of the OTS. The respondent-Bank has already shown its benevolence by even granting a revised OTS but the petitioners failed to make the payment as per the schedule set out therein.

4. Heard.

5. The petitioners are stated to have taken credit facilities from the respondent-Bank to the tune of Rs.70 crores on 15.11.2013. The petitioners could not repay the loan as per the schedule set out at the time of sanction of the loan. The account of the petitioners was classified as a Non Performing Asset on 13.12.2016. The petitioners had made a representation on 12.08.2019 (Annexure P-2) to the respondent-Bank to settle the loan account for a sum of Rs.48 crores.



The respondent-Bank accepted their OTS proposal vide sanction letter dated 27.09.2019 (Annexure P-3) wherein it is mentioned that they had to make the payment of Rs.48 crores by 31.12.2019. It was further stipulated that they could even make the payment by 31.03.2020 but in that case, the amount would be increased to Rs.50 crores. The petitioners paid only Rs.8.61 crores and failed to make the payment as per the schedule set out under the OTS. However, the respondent-Bank is stated to have accepted another OTS on 01.02.2021 (Annexure P-7) and the petitioners were to make payment of Rs.41.39 crores by 31.03.2021. It was also stipulated in the terms and conditions of the latest OTS that the payment beyond 31.03.2021 would attract simple interest @ 12.25% per annum on the reducing balance.

6. Admittedly, the petitioners again failed to make the entire payment as per the terms and conditions set out in all the three OTS agreements. They are stated to have made a payment of about Rs.8.61 crores in the year 2020 while he had paid another sum of Rs.3.79 crores in year 2021. Learned counsel for the respondent-Bank has informed us that the Bank is stated to have cancelled the OTS vide letter dated 01.06.2023 and the outstanding dues against the petitioners as on date are Rs.48,18,76,574/-.

7. We do not find any merit in the contention of learned counsel for the petitioners that the petitioners could have made payments beyond 31.03.2021 along with simple interest @ 12.25% per annum in view of the letter dated 01.02.2021 (Annexure P-7), as no time period had been prescribed as to when the payment of the last installment of the OTS had to be made as the petitioners did not make any payment whatsoever after 31.03.2021.



8. It is trite that the terms and conditions of the OTS cannot be so construed so as to give the petitioners an indefinite time period to make the payment at their leisure. The petitioners had preferred the instant writ petition on 17.10.2022 and only notice had been issued to the respondent. There was no interim order in favour of the petitioners and therefore, we do not find any infirmity in the cancellation of the OTS on 01.06.2023.

9. Even otherwise, the petitioners have not challenged the communication cancelling the OTS. In the instant petition, they have sought the following relief:-

“Civil Writ Petition under Article 226 of the Constitution of India for issuance of writ in the nature of MANDAMUS directing the respondent bank to consider the request of the petitioners dated 13.09.2022, Annexure P/9, to grant time for payment of the balance dues as per the OTS letter dated 01.02.2021, Annexure P/7 by a further period of nine months, without insisting upon unilateral onerous conditions of treating some of the mortgaged properties as prime properties to be released at the last and charging the interest for the period granted to pay the OTS amount, as there were no such conditions in the original OTS sanction letter dated 27.02.2020, Annexure P/4 and the agreement in pursuance thereto.”

10. Therefore, it is patent that the petitioners have only sought a direction to the respondent-Bank to consider their representation and grant them nine months time to make the payment of the balance amount as per the OTS sanctioned vide communication dated 01.02.2021 (Annexure P-7).

11. It is trite law that this Court while exercising writ jurisdiction ought not to direct the respondent-Bank to extend the time or modify the terms and conditions of the OTS. Reference can be made to the judgment of the Supreme Court in case of ***Bijnor Urban Co-operative Bank Limited Vs. Meenal Aggarwal, (2023) 2 Supreme Court Cases 805***. The relevant extract thereof is reproduced as under:-



“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.”

12. We are therefore, of the considered view that the direction to the respondent to extend the OTS would be impermissible in view of the law laid down in the case of ***Bijnor Urban Co-operative(supra)***.

13. At this juncture, learned counsel for the petitioners prays for liberty to seek recourse to the alternative remedy in accordance with law.

14. Consequently, the petition is dismissed with the aforesaid liberty. It is however, clarified that nothing observed hereinabove would be construed to be an expression of opinion on the merits of the case and would have no bearing on the adjudication by the competent Court/Tribunal.

(ANUPINDER SINGH GREWAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

12.05.2025

Sapna

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No