

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.14965 and 14967 of 2021

M/s.Ganga Foundations Pvt Ltd,
New No.69, Old No.33, Hemavathy Complex,
Paper Mills Road, Perambur Chennai- 600 011.
New Office.M/s. Ganga Foundations Pvt Ltd
No.2 4th Floor, Ishana Apartments,
Jayam Gardens, Jawaharlal Nehru Road,
Chennai 600 099.

... Petitioner in
WP.14965/2021

S.Senthil Kumar

... Petitioner in
WP.14967/2021

-VS-

1.State Bank of India

Rep by its Assistant General Manager,
SME Chennai Branch, No.39, 6th Floor,
Prasanth Gold Towers, T.Nagar, Chennai- 600 017.

2.State Bank of India

Rep by its Deputy General Manager,
Stressed Assets Management Branch,
Red Cross Building, No.32, Red Cross Road,
Egmore, Chennai- 600 008.

... Respondents in
both WPs.

Prayer: Petitions filed under Article 226 of the Constitution of India for

issuance of a WP.No.14965 of 2021 - Writ of Certiorarified Mandamus calling for the records relating to the proceedings in SAMB/CLO-I/2021-2022/136 letter dated 20.05.2021 of the 2nd Respondent herein, quash the same and consequently direct the Respondent Bank to extend the time for a period of 180 days from 29.07.2021 to settle the final payment under the OTS Scheme in respect of the Account No.34005666665 in respondent bank; and WP.No.14967 of 2021 - Writ of Mandamus directing the respondent bank to extend the time for a period of 180 days from 29.07.2021 to settle the final payment under the OTS scheme in respect of the Account No.34842221500 in respondent bank.

For Petitioners : Mr.AR.L.Sundaresan,
Senior Counsel,
for Ms.AL.Ganthimathi

For Respondents : Mr.K.Chandrasekaran

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ORDER

(Made by the Hon'ble Chief Justice)

These two petitions pertain to related accounts where the petitioners have obtained credit facilities from the State Bank of India and in respect whereof the said secured creditor has offered one-time settlement terms.

2. The petitioners say that they have made the first two tranches of payment required under the OTS terms, but, upon the petitioners'

request to the secured creditor to release the title-deeds pertaining to some of the immovable properties furnished by way of security, the State Bank declined to do so. The reason proffered by State Bank was that such title deeds had been furnished before the Debts Recovery Tribunal in recovery or related proceedings pending before such Tribunal.

3. It also appears that the terms of the OTS do not permit the securities to be released or discharged prior to the settlement being completed. In a sense, the terms may appear to be arbitrary to some extent; but the court cannot interfere in such matters since it is a private arrangement between a bank and its constituent and the bank is entitled to insist on certain terms.

4. The further grievance of the petitioners is that though there has been no default committed as on date in making payment under the OTS terms, in view of the second surge of the pandemic and industries across the board being shut down as a consequence thereof, the time to make payment of the third and further instalments under the OTS terms should be extended.

5. Again, the court cannot come to the assistance of the petitioners, however sympathetic the court may be in recognising the plight of business entities in the wake of the lockdowns imposed pursuant to the second surge of the pandemic. For one, OTS terms are offered to similarly placed constituents and there can be no good ground as to why the terms should be relaxed for one constituent simply because such constituent has come to court or has the ability to come to court. Secondly, there is no element of public interest involved in such matter particularly since the contract pertaining to the credit facilities and the OTS terms are private agreements made between two parties and the status of the bank as a nationalised bank has nothing to do with the terms of the contracts.

6. At the same time, it must be appreciated that the terms offered by State Bank ought to be similar in respect of the same class of constituents. In other words, if the OTS terms have not been relaxed or the time to make any payment thereunder enlarged for all constituents offered similar OTS terms, a special case cannot be carved out for any constituent; nor does the court have the authority to coerce the secured creditor to alter or vary the OTS terms.

7. Accordingly, W.P.Nos.14965 and 14967 of 2021 are disposed of by requesting the State Bank to re-consider its stand as to whether the obligation to make further payments in terms of the OTS scheme may be enlarged across the board so that the petitioners and all other similarly placed persons may avail of such benefit. There is no doubt that the pandemic caused complete disruption of normal life and businesses were the hardest hit.

8. The State Bank is, thus, requested to re-consider its stand and communicate its fresh decision on the petitioners' request within a period of four weeks from date. It is needless to say that if the petitioners are shown any lenience, the similar benefit should be passed on to other similarly placed constituents of State Bank. For a period of six weeks from date, the bank should not take any precipitous action against the petitioners till the petitioners have sufficient time after the receipt of the bank's decision on re-considering the matter.

W.M.P.No.15804 of 2021 is closed. There will be no order as to costs.

(S.B., CJ.) (S.K.R., J.)
22.07.2021

Index : yes/no

sra

To:

- 1.The Assistant General Manager,
State Bank of India
SME Chennai Branch, No.39, 6th Floor,
Prasanth Gold Towers, T.Nagar, Chennai- 600 017.
- 2.The Deputy General Manager,
State Bank of India
Stressed Assets Management Branch,
Red Cross Building, No.32, Red Cross Road,
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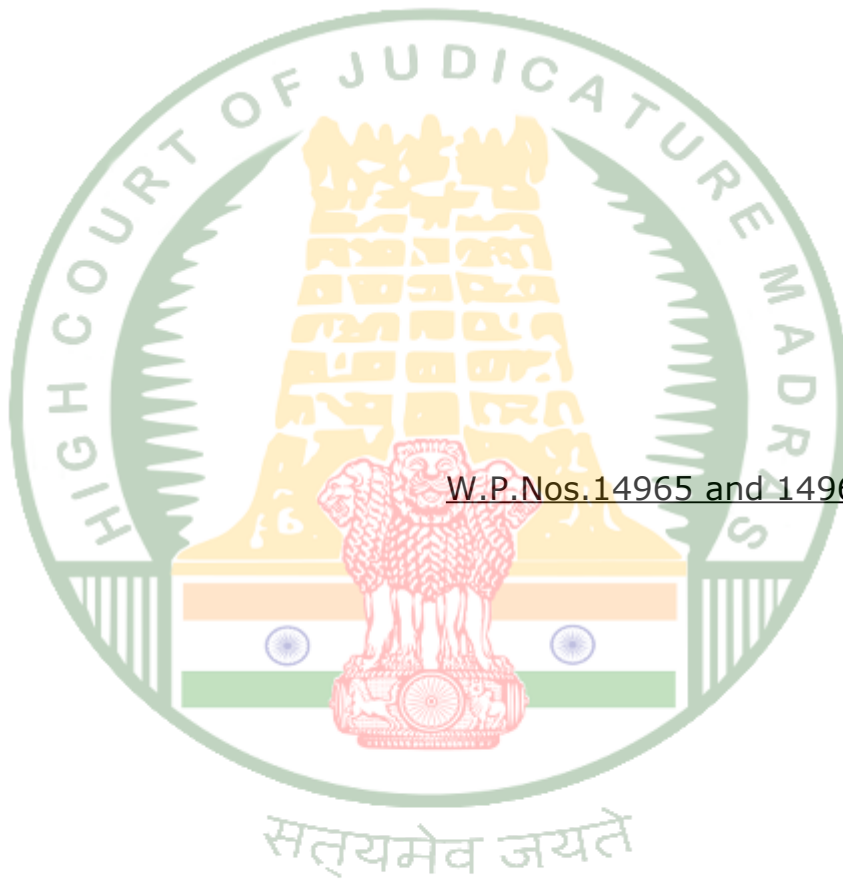
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THE HON'BLE CHIEF JUSTICE
AND
SENTHILKUMAR RAMAMOORTHY, J.

(sra)



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