**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 9069 of 2021**

**With**
**R/SPECIAL CIVIL APPLICATION NO. 16597 of 2018**
**With**
**CIVIL APPLICATION (FIXING DATE OF EARLY HEARING) NO. 1 of 2021**
**In R/SPECIAL CIVIL APPLICATION NO. 16597 of 2018**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE BIREN VAISHNAV**

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | |
| 2 | To be referred to the Reporter or not ? | |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | |

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M/S HAREKRUSHNA INFRA PROJECTS PVT LTD & 1 other(s)
Versus
STATE BANK OF INDIA

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Appearance:
MR AL SHAH, SENIOR ADVOCATE WITH MR ADITYA A GUPTA(7875) for the Petitioner(s) No. 1,2
MOHIT A GUPTA(8967) for the Petitioner(s) No. 1,2
MR AR GUPTA(1262) for the Petitioner(s) No. 1,2
MS NEETA A PANDIT(5952) for the Petitioner(s) No. 1,2
MR ANIP A GANDHI(2268) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE BIREN VAISHNAV**

**Date : 08/07/2022**

**CAV JUDGMENT**

1. The petitioners have filed this petition, under Article 226 of the Constitution of India, seeking the following prayers:

> "20. (A) **BE PLEASED** to issue a writ of mandamus or any other writ, order or direction to direct the Respondent Bank to issue a No-Due certificate to the Petitioners and to further release the mortgage documents deposited and in the custody of the Respondent bank and execute such documents as required for release of mortgage in the interest of justice.
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> (B) **BE PLEASED** to direct the Respondent Bank to take all steps to release the charge registered in its favour with Statutory Authorities such as Registrar of Companies, Central Registry of Securitisation Asset Reconstruction and Security Interest of India ('CERSAI' for short), Land Revenue Authorities and/or any other authority in the interest of justice.
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> (C) **BE PLEASED** to issue a writ of certiorari or any other writ, order or direction to declare and quash the proceedings undertaken by the Respondent bank under the provisions of the SARFAESI Act, 2002 including the proceedings under Section 14 being Application No. DC/MAG/Securitisation/S.R. 72/2016 pending before the Ld. Collector, Ahmedabad annexed at Annexure J to this petition, as being illegal, null & void ab-initio, without jurisdiction, without the authority of law and in violation of the provisions of SARFAESI Act, 2002 as being illegal and a nullity in the interest of justice."



2. Facts in brief are as under:

2.1 The petitioner no. 1 is a company incorporated under the Companies Act 1956 and the petitioner no. 2 is a partnership firm. The petitioner received a letter from the respondent – State Bank of India

dated 11.09.2017 offering One Time Settlement (OTS) stating that the bank had outstanding dues of Rs.12,34,54 ,566/- which could be settled by payment of Rs.9,90,58,133/-. According to the bank, if the amount was paid before 31-12-2017, the petitioners will be eligible for an additional incentive of 10% over the OTS amount.

2.2 One of the terms of this OTS was that since the petitioners had been issued a notice under the Securitisation And Reconstruction Of Financial Assets And Enforcement of Security Interest Act, 2002 ( for short the 'SARFAESI Act'), the notice is issued without prejudice to the rights to continue the action and unless a compromise is arrived at under the present OTS scheme. On 25.09.2017, a letter was sent by the petitioner no. 1 indicating that it had arranged for Rs.1,24,00,000/- in the current account of the respondent Bank. By a letter dated 03.10.2017, the bank accepted the application money and appropriated the amount towards OTS. On 04.10.2017, the petitioner no.1 indicated that it would remit the entire OTS amount before 31-12-2017. It was requested to the bank that if the amount is repaid before 31-12-2017, the bank should release the documents and give a no due certificate. Several letters were written by the petitioners to bank that as the petitioners had paid the OTS amount, the title documents be released and consent terms be filed before the DRT and further to provide a No-due certificate. It is the case of the

petitioners that despite this specific condition and the full payment having been made, the bank is neither releasing the documents and also not giving no due certificate.

2.3 The bank thereafter sent a letter dated 28.08.2018 stating that as the case of the petitioners was reported as fraud to RBI for some fraudulent transactions which took place during the year 2016, the petitioners are not entitled to the benefits of OTS . The petitioners have also not been returned the money which the petitioners deposited as a part of the OTS settlement. According to the petitioners, the bank has not given the cause as to when the case was reported to the RBI and what is the case against it.



3. Mr A L Shah, learned Senior Counsel appearing with Mr. Aditya Gupta, learned advocate for the petitioners has made the following submissions:

3.1 The principle of promissory estoppel squarely applies against the respondent Bank. Once the petitioners had paid the entire amount pursuant to the offer made by the bank under the OTS scheme and change their situation, it could not have cancelled the OTS letter when at no stage the case was reported as fraud. The allegations of fraud are bald in nature

and no particulars are discussed in the letter dated 28.08.2018.

3.2 The action of the bank in not releasing the title papers and issuing a no due certificate and clearing the charge of the bank and also not withdrawing the legal action against the petitioners under the SARFAESI Act is bad. Inviting the attention to the relevant pages and annexures to the rejoinder, he would submit that the petitioners' loan application was for Rs.14 crores. The application clearly stated that the company will replace the collateral securities that were initially offered within 6 months and provide the properties as collateral security shown in the application. The original properties' market value was Rs.2665.75 lakhs which was to be replaced by other properties having a market value of Rs.3295.00 lacs. The Bank's appraisal report and the Memorandum of Sanction was also placed on record of the bank that clearly expressed that the company will replace this collateral security within 6 months and provide the properties which are detailed in the Memorandum of Sanction. The final sanction letter of the bank did not include the term of replacing the original security and therefore the petitioner wrote to the bank that it was not interested in availing the working capital facility.



3.3 Accordingly, the bank released the equitable mortgage by executing a release deed on 17.12.2013. On 01.01.2014**,** the petitioners

wrote to the bank that the company had requested for a credit facility by offering certain collateral security. On a temporary basis it was therefore requested that a certain property be given as collateral security with an agreement to replace the same within 6 months. The letter therefore specifically mentioned that now that the company was informed that the bank will replace the Collateral security, Sanction letter has been accepted.

3.4 The bank by two separate letters asked two separate law firms for title clearance of the new property. Letters were also written to the valuer to carry out valuation of the new property offered for replacement of the original property given as security. One letter was written to one Shri Hasmukh Patel and the other to one Shri Vipulbhai of Multimulayankan. The valuation report of value of the property offered as replacement of the original security at market value of Rs. 33,69,00,000/- and realisable value of Rs.30,32,10,000/-. On 18.08.2014, the bank wrote one letter to its zonal office stating that as per the original sanction letter it was agreed to replace the existing collateral of 109 flats and 15 shops with certain properties at Odhav.

3.5 Mr. Shah would submit that as per the OTS letter dated 11.09.2017 against the ledger outstanding of Rs.1,23,45,44,565/-, only

Rs.9,90,58,133/- was to be paid. Additional incentive of 10% on the OTS amount would be given if the entire OTS amount is paid on or before 31-12-2017. The petitioner accordingly deposited the amount on 4.10.2017. The total amount deposited was Rs.89,15,22,320/-. Reminder was sent to the bank and the bank was requested to release the documents and issue no due certificate. The bank had filed application under section 14 of the Securitization Act which had to be withdrawn. A criminal case was filed by the bank in the year 2016 which was converted into criminal inquiry and then by a detailed judgement the same was dismissed without even issuing any summons to the petitioners.

3.6 Mr. Shah would rely on a decision of the Supreme Court in the case of **Gujarat State Financial Corporation vs. Lotus Hotels Private Limited reported in AIR 1983 SC 848** and submit that the principle of promissory estoppel would apply which would estop the bank from backing out of the obligations arising out of the OTS letter and the settlement.



4. Mr. Anip Gandhi, learned advocate appearing for the respondent Bank would submit that the petition is not maintainable on the ground of alternative remedy available to the petitioners under the SARFAESI Act. He would rely on the decision of the Apex Court in the case of **United**

**Bank of India vs. Satyawati Tondon and others reported in (2010) 8 SCC 110** and submit that as per Section 17 of the SARFAESI Act, the petitioner should have approached the Debt Recovery Tribunal.

4.1 Mr. Gandhi would further submit that the petitioners had taken a loan from the erstwhile State Bank of Bikaner and Jaipur which merged with the State Bank of India. The bank came out with a One Time Settlement scheme which was available to all accounts except the loan account about which is reported to the RBI as fraud. He would rely on clause 2.1 of the scheme which indicated that cases reported as fraud to RBI will not be eligible.

4.2 Mr. Gandhi would submit that the petitioners had committed fraud by selling the collateral mortgage securities namely the flats and the shops without permission, release or without obtaining NOC from the bank and also did not deposit the sale proceeds with the bank to satisfy the loan amount. The bank therefore apart from lodging a criminal case had also registered a complaint with the Economic Offences Wing at Mumbai. He would submit that since the petitioners were made aware that their account would be declared as fraud, only with a view to saving their skin and future action, they deposited an amount of Rs.89,15,22,320/- with the bank. The act of withdrawing the OTS

settlement was in accordance with law and in accordance with the RBI guidelines which prevented the bank from settling the loan account in cases of fraud.

5. Having considered the submissions made by the learned counsel for the respective parties, at the outset it is required to be mentioned that Mr. Anip Gandhi's contention that the petition is barred by alternative remedy of SARFAESI Act is without merit. Reliance placed on the decision in the case of **Satyawati Tondon and others** (supra) would not be applicable to the facts of the present case as here the prayer is for returning the documents of mortgage deed as promised. Once an OTS is entered into and amount paid, the bank ought not to have backed out. The contention therefore that the petition is barred by alternative remedy is misplaced.



5.1 The sequence of events as stated hereinafter indicate that the bank ought to have released the properties by executing a release deed and return the documents which are in custody of the bank and also ought to give a no due certificate to the petitioners. Perusal of the fresh proposal for working capital- cash credit put up by the petitioners would indicate that as security collateral residential flats 109 in number and 15 total shops situated at Rajipa Greenland with the market value of Rs. 2665.76

lacs was offered. The letter also stated that the company will replace the above collateral within 6 months and provide properties at Odhav which had a market value of Rs. 3295.00 lacs. The realisable value was Rs.3130.25 lacs and the distress value was Rs. 2965.50 lacs. A memorandum of sanction was issued and details of the collateral security were furnished.

5.2 It was also pointed out that the company will replace the above collaterals within 6 months. The final sanction letter did not include the term of replacing the original security. The petitioners informed the bank that they were not interested in availing the loan. A letter was written on 16.12.2013 by the petitioner that since they were not interested in the loan their original properties be released and the documents be returned .



5.3 The bank actually entered into a release deed. The release deed was executed on 17.12.2013. On 1st January 2014, the petitioners addressed a letter to the bank that they had cancelled the entire loan document to avoid problems but now the company has been informed that the bank was willing to replace the collateral security and release the charge on the collateral security consisting of 109 flats and shops. That the bank was willing to accept the exchange of collateral securities was evident from the action of the bank in writing letters to advocates on 10th

of April 2014 asking them to investigate into the title of properties in exchange of the properties that the petitioners offered and furnish a title clearance certificate. Even two valuation reports were called for from two separate valuers by the bank for the property offered as alternate security collateral. This therefore evidently suggested that the bank had in fact accepted the offer of the petitioner as initially stated in the proposal to exchange the collateral securities. The letter dated 18th August 2014 of the bank addressed to the petitioners categorically stated that as per original sanction, the Bank had agreed to replace the existing collaterals that is 109 flats and 15 shops with the properties in exchange. The valuation reports called for by the bank from the two valuers itself suggested that the properties in exchange offered as collateral security not only had clear and marketable title but even the distress value of the said new property was almost twice the amount of the loan granted.



5.4 The sequence of events would indicate that pursuant to the OTS settlement offered by the bank. The entire OTS amount was accepted by the bank which was paid on or before 31-12-2017. This was before the bank had declared and reported the account as fraud. Once the petitioners had clearly stated in the loan application that wsthe offered security was only for a temporary period of six months which the petitioners will replace with the property mentioned as alternative securities and when the

bank had by its letter dated 18th August 2014 unequivocally accepted the stand by initially offering to release the equitable mortgage by executing a document dated 17.12.2013 and the bank relying on such assurance had accepted the condition of the loan document the bank was clearly estopped from changing its position to the detriment of the petitioners.

6. The stand of the bank in not honouring its terms of settlement by keeping the proceedings before the Debt Recovery Tribunal pending and not issuing a release deed of mortgage properties and also no due certificate is illegal and contrary to law. When the entire amount was paid pursuant to the OTS settlement, the bank could not have cancelled the settlement vide its letter dated 28.08.2018 stating that as the case of the petitioners was reported as fraud, the petitioners were not entitled to the benefits of ATS. In light of the decision in the case of **Lotus Hotel** (Supra), it is clear that the principle of promissory estoppel applies. The bank by its conduct of offering an OTS settlement intended to create legal relations which the petitioners had acted upon in light of the promise made and paid the amount on or before 30th of December 2017. This action was apparently accepted in principle by the bank as not only for the title clearance certificate but valuation reports letters were written by by the bank to the advocates and the valuers. The amounts were paid and accepted by the bank and once the petitioners had acted upon on the

promise set out by the bank, the bank cannot be allowed to go back on its proposal on the basis of a letter dated 28th August 2018 stating that the scheme of OTS was not applicable as the cases of the petitioners was reported as fraud. The act on behalf of the bank therefore in not releasing the title documents, not issuing of a no due certificate and not withdrawing the pending legal actions against the petitioners is arbitrary and violates the constitutional guarantee enshrined under Article 14 of the Constitution of India as held by the Hon'ble Supreme Court in the case of **Central Bank of India versus Devi Ispat (2010) 11 SCC 186.** The relevant portion of the judgement reads as under:

> "11. A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions. Dispute arising out of the terms of such contracts or alleged breaches have to be settled by the ordinary principles of law of contract. The fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. The disputes about the meaning of a covenant in a contract or its enforceability have to be determined according to the usual principles of the Contract Act. Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law. In the present case, it has not been shown how the contract is statutory. The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is

> justified or not, are not the matters which could have been agitated and decided in a writ petition. The contractor should have relegated to other remedies."
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> 11) We have gone through the factual details in both the decisions. It is not in dispute that a specific mandamus was sought for in both the cases for implementation of a clause in a contract which was rightly negatived under Article 226. It is settled law that the disputes relating to interpretation of terms and conditions of a contract could not be examined/challenged or agitated in a petition filed under Article 226 of the Constitution. It is a matter for adjudication by a civil court or in arbitration, if provided for in the contract or before the DRT or under the Securitization Act. In the case on hand, the respondent- Company has demonstrated that based on the advise of the appellant-Bank, they shifted their accounts to another Nationalized Bank and through an arrangement with the State Bank of India, a cheque of Rs.15 crores was deposited by their Bank and in token of the same, by statement of accounts dated 14.05.2009 the appellant- Bank clearly mentioned that there is no due or nil balance from the respondent-Company (Emphasis supplied). In such circumstances, when the relief sought for does not relate to interpretation of any terms of contract, the Bank being a Nationalized Bank, a Writ Court can issue appropriate direction in certain circumstances as mentioned above. In such a factual matrix, the reliance placed on these two decisions is not helpful to the appellant-Bank."

7. Accordingly, the petition is allowed. The respondent bank is directed to issue a no due certificate to the petitioners and further release the mortgage documents deposited which is in the custody of the bank and is further directed to execute such documents as may be required for the release of mortgage of the properties in question. Further directions are issued that the bank shall withdraw the pending proceedings against the petitioners under the SARFAESI Act pending before the competent

authorities. The proceedings pending before the competent authorities under the SARFAESI Act are declared as null and void and treated as if not pending in accordance with the terms of the OTS entered into between the parties.

8. In view of the order made in this petition, the merits of Special Civil Application No. 9069 of 2021 need not be examined and shall also stand allowed in light of the reasoning mentioned herein above. Civil Application also stands disposed of in view of the judgement and order in the main matter.

**(BIREN VAISHNAV, J)**



After the pronouncement of the judgement today, Mr. Anip Gandhi, learned advocate appearing for the respondent bank requests for stay of the judgement. Request is rejected.

**(BIREN VAISHNAV, J)**

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