

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on: 29.01.2024
Pronounced on: 31.01.2024

WP(C) No.07/2023

MS. GOUSIA TRADERS

...PETITIONER(s)

Through: Mr. Mudasir Bin Hassan. Advocate.

V/s

THE J&K BANK LTD. & ORS.

...RESPONDENT(S)

Through: Mr. Adil Asmi, Advocate.

CORAM:HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

(JUDGMENT)

1. Heard learned counsels for the parties.
2. The petitioner- a proprietary concern had availed a cash credit facility from the respondent-Bank and continued to deposit the installments in accordance with the terms and conditions of the sanction of facility accorded by the respondent-Bank. It is stated that in the year 2018, the Aircel-company was declared bankrupt, as a result of which, the petitioner suffered huge loss. Thereafter due to abrogation of Article 370 and Covid-19 Pandemic, financial health of the petitioner-concern further deteriorated.
3. In the year 2021, the petitioner took money from the private financiers for reviving its business. The petitioner, as such, approached the respondent Bank in the year 2022 informing them about the loss

suffered by the petitioner and apprised the Bank that it was ready to make settlement with the Bank but the Bank officials, instead of showing any sympathy towards the petitioner, started harassing and humiliating the petitioner. Thereafter the petitioner approached the Secretary, Legal Services Authority, Pulwama, for taking a sympathetic view. The Branch Manager of the respondent Bank appeared before the District Legal Services Authority and stated that no settlement was possible and the petitioner can approach the Bank authorities for appropriate adjustment of the accounts. The petitioner thereafter submitted a legal notice-representation with the respondents for taking a sympathetic view in the matter by waving the interest from the year 2018 and further permitting the petitioner to liquidate the principal amount in easy installments.

4. The petitioner further claims to have submitted another representation dated 14.12.2022 with the respondents but to no effect. The petitioner, as such, has filed the present writ petition for the following reliefs:

- I. Issue a writ of Mandamus or any other appropriate writ order or direction, the respondents be directed to re-structure the CC account bearing No. 047602010000082 of the petitioner firm so that it would be in a position to pay installments regularly.
- II. By issuance of writ of Mandamus or any other appropriate writ order or direction, the respondents be directed to extend the benefit of One Time Settlement Scheme of 2022 to the petitioner firm also so that the petitioner would be in a position to settle the accounts with the respondent bank and pay the installments regularly thereof.
- III. By issuance of writ of mandamus or any other appropriate writ order or direction, the respondents be directed not to harass the petitioner or its guarantors and not to deduct any amount from their salary.

5. The respondents have filed the response stating therein that the writ petition is not maintainable because none of the rights of the petitioner has been infringed or invaded by the respondents. It is stated that the petitioner had been enjoying cash credit facility for distribution of Aircel products in District Pulwama since 2005 with limit of Rs.15.00 lacs, which was subsequently enhanced to Rs.45.00 lacs in the year 2017. The facility was sanctioned against the mortgage of two storied shop along with land measuring 02 marlas comprising Survey No.2145/1436 situated at Main Market, Pulwama, and third-party guarantee of two persons. It is stated that in order to help the petitioner to mitigate the loss suffered by it, the respondent Bank supported the petitioner properly and even disbursed an additional amount of Rs.8.99 lacs in the form of GECL facility with moratorium of one year as re-structured loan to revive its business. It is further stated that the petitioner never approached the respondent-Bank for re-structuring of the loan account but requested for settlement of the account. In the year 2022, the petitioner approached the respondent Bank for One Time Settlement but as per the policy of the Bank, OTS cannot be done in accounts which are standard and, as such, the proposal was declined after consultation with the Law Department of the respondent Bank. The respondents have further stated that the mortgaged property is valued at Rs.65.75 lacs as per valuation report dated 05.08.2022 i.e. well above the loan amount, therefore, OTS is not possible in the instant case.

6. From the record, it is evident that the petitioner has availed cash credit facility of Rs.45.00 lacs from the respondent Bank. The petitioner

has also not denied to have received an additional amount of Rs.8.99 lacs on account of GECL facility with a moratorium of one year from the respondent Bank, as averred in the response filed by the respondents. The account of the petitioner has not been declared as 'Non-Performing Asset'. The relationship between petitioner and the respondents is that of creditor-debtor governed by the terms and conditions of the grant of facility by the respondent-bank. It is admitted by the petitioner that the loan has been secured by the guarantee. The petitioner has not denied that his account is standard and in view of the fact that the relationship between petitioner and the respondent Bank in respect of liquidation of the loan facility is governed by the agreement between them, this Court cannot issue any direction to the respondent Bank to re-structure the CC Account of the petitioner as it would amount to modifying the terms and conditions of the facility granted by the bank and also no direction can be issued against the respondent-bank to extend the benefit of OTS of 2022 to the petitioner. The petition is found to be misconceived, as such, the same is dismissed.

(RAJNESH OSWAL)
JUDGE

Srinagar
31.01.2024
"Bhat Altaf, PS"

Whether the order is reportable: Yes/No