

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

MONDAY, THE 26TH DAY OF APRIL 2021/6TH VAISAKHA, 1943

WP(C).No.12538 OF 2020(N)

PETITIONER:

A.V.PRASANTH, AGED 47 YEARS,  
S/O.K.APPUKUTTAN NAIR MANGALASSERY,  
KALATHARA VEEDU, OHM NAGAR,  
MANIKANDESWARAM P.O.,  
THIRUVANANTHAPURAM.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS:

- 1 SYNDICATE BANK REPRESENTED BY  
SENIOR MANAGER, HEAD OFFICE MANIPAL,  
KARNATAKA, PIN-576 104.
- 2 MANAGER, SYNDICATE BANK,  
SASTHAMANGALAM, ARMB,  
THIRUVANANTHAPURAM, PIN-695 010.
- 3 BRANCH MANAGER, SYNDICATE BANK,  
ASSET RECOVERY MANAGEMENT BRANCH,  
ERNAKULAM, PIN-682 018.
- ADDL.4 B.S.VASANTHI, AGED 72 YEARS,  
W/O. K. APPUKUTTAN NAIR, MANGALASSERY,  
KALATHARA VEEDU, OHM NAGAR,  
MANIKANTESWARAM P.O.,  
THIRUVANANTHAPURAM.

(ADDITIONAL R4 IS IMPLEADED AS PER ORDER DATED  
16/10/2020 IN IA 01/2020)

R1-R3 BY ADV. SRI.R.S.KALKURA  
R4 BY ADV. K.RAMAKUMAR (SR.)  
R4 BY ADV. SRI.T.RAMPRASAD UNNI

WP(C) No.12538/2020

: 2 :

R4 BY ADV. SRI.S.M.PRASANTH

R4 BY ADV. SRI.G.RENJITH

R4 BY ADV. SMT.R.S.ASWINI SANKAR

R4 BY ADV. SRI.T.H.ARAVIND

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 26-04-2021, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

## **J U D G M E N T**

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***Dated this the 26<sup>th</sup> day of April, 2021***

The petitioner, who is running a proprietary business in construction, hardware and paint materials, has filed this writ petition seeking to command respondents 1 to 3 to immediately release loan papers, security title deeds and other documents obtained towards the loan covered by Ext.P3 settlement. Incidental reliefs are also sought for.

2. The petitioner states that the 2<sup>nd</sup> respondent-Manager, Syndicate Bank, Sasthamangalam Branch provided a term loan facility of ₹90 lakhs to the petitioner on 30.10.2006. SARFAESI proceedings were initiated by the Bank against the petitioner. The petitioner filed WP(C) No.28398/2011 when Section 14 was invoked. This Court granted 10 EMIs to discharge the liability of about ₹100 lakhs.

Though the petitioner made substantial remittances, on making a default, the Bank recalled the One Time Settlement facility on 18.03.2017.

3. The Bank then filed O.A. No.440/2017 in the DRT, Ernakulam for realisation of dues. The petitioner would submit that during the interregnum, he had brought down the outstanding to ₹25 lakhs even as per the bank statement. But, the Bank brought up the amount to ₹55 lakhs soon. By 18.03.2017, when OTS offer was withdrawn by the Bank, the petitioner had remitted more than ₹100 lakhs.

4. The Bank again permitted the petitioner to settle the liability for a total amount of ₹35,50,000/- as per Ext.P3 dated 15.01.2020. Towards this settlement, the petitioner paid ₹5,50,000/- on 15.01.2020 itself as is evident from Ext.P4. Thereafter, ₹18 lakhs was paid on 11.03.2020 and ₹7.5 lakhs on 20.03.2020. Another ₹4,50,000/- was transferred to the Bank on 20.03.2020.

5. Thus, the entire OTS amount of ₹35,50,000/- was paid. Now, the Bank is not returning to the petitioner the title

documents in respect of the property offered by the petitioner on a specious plea that in view of RBI directions, the Bank cannot accept the OTS agreed upon. The respondents are therefore compellable by appropriate orders of this Court to return the title documents to the petitioner.

6. Respondents 1 to 3 filed counter affidavit and opposed the writ petition. Respondents 1 to 3 stated that the account of the petitioner became NPA on 31.12.2008. In WP(C) No.30040/2009, this Court permitted the petitioner to clear the outstanding amount in five equal monthly instalments. The petitioner failed to pay. The petitioner then filed WP(C) No.28398/2011. This Court granted time to the petitioner to pay the balance amounts due, in 10 equal monthly instalments. The petitioner still failed to clear the loan.

7. Respondents 1 to 3 denied the statement of the petitioner that ₹28,86,562/- was paid on 30.03.2015. According to the respondents, the entry shown in their statement of accounts is a mistake. The petitioner paid only

₹65,00,000/- by 27.12.2014. Thus, as against ₹100 lakhs, the petitioner paid only ₹65 lakhs within the time limit prescribed for OTS. The OTS therefore stood terminated.

8. Thereafter, the petitioner submitted Ext.R1(d) offer dated 14.01.2020 to settle the account for ₹35,50,000/-. The offer was addressed to the Regional Manager. At that time, the loan outstanding was ₹1,06,22,805.19. Market value of the secured property would come to ₹2,19,84,000/-. Therefore, the Regional Manager could not have settled the account of the petitioner under OTS for ₹35,50,000/-. It could have been settled only by the next higher authority, as per RBI stipulations. Ext.P3 settlement is without any authority, contended respondents 1 to 3.

9. The counsel appearing for the additional 4<sup>th</sup> respondent, who is the mother of the petitioner, argued that the Bank being 'State', cannot take a defence that the One Time Settlement as per Ext.P3 is a mistake. The principles of promissory estoppel would come into play, against the Bank.

10. Heard the learned counsel for the petitioner, the learned Standing Counsel appearing for the Bank and the learned Senior Counsel assisted by the counsel for the additional 4<sup>th</sup> respondent.

11. The pleadings would disclose that the petitioner availed a loan of ₹90 lakhs on 05.12.2006. When SARFAESI proceedings were initiated, the petitioner approached this Court and in WP(C) No.28398/2011, this Court permitted the petitioner to pay back ₹100 lakhs in ten equal monthly instalments. According to the petitioner, pursuant to the judgment, he remitted a substantial amount. The Bank would admit that the petitioner paid ₹25 lakhs on 30.06.2014 and ₹40 lakhs on 27.12.2014. As the entire amount was not cleared, the Bank recalled the settlement and filed O.A. No.440/2017 in the DRT, Ernakulam, for recovering ₹90 lakhs.

12. The petitioner thereafter made a fresh offer for One Time Settlement to the Regional Manager of the Bank agreeing to settle the loan for ₹35,50,000/-. The offer was accepted by the Bank on 15.01.2020 as per Ext.P3

communication, which reads as follows:

“In continuation of our e-mail dated 14.01.2020, we would like to inform you that the competent authority has accepted your OTS proposal for Rs.35,50,000/- for your account M/s.Guruji Enterprises with the following conditions:

1. Initial OTS payment for Rs.5,50,000/- is to be paid tomorrow 15.01.2020 without fail.

2. Remaining Amount of Rs.30,00,000/- is to be paid before 20.03.2020.

3. DRT cases will be withdrawn and title deeds will be returned only after closure of the loan account through OTS on receipt of full payment.

4. If the remaining amount of Rs.30,00,000/- is not paid before 20.03.2020 this offer letter will stand cancelled and you shall be liable to pay the full amount of Rs.10,32,57,000/- plus interest in addition to the above conditions mentioned in our earlier mail dated 14.01.2020.”

13. The petitioner paid ₹5,50,000/- on 15.01.2020, ₹18,00,000/- on 11.03.2020 and ₹7,50,000/- on 20.03.2020. Another amount of ₹4,50,000/- was transferred to the Bank through RTGS on 20.03.2020. Thus, the petitioner remitted the entire OTS amount within the time stipulated in Ext.P3. Still, respondents 1 to 3 are refusing to admit the settlement and return to the petitioner the title documents deposited by him by way of security.



14. The contention of the Bank is that since the secured property would fetch more than ₹2 Crores, as per Exts.R1(d) and R1(e) guidelines, the account could not have been settled by the Bank for ₹35,50,000/-. The further argument is that the settlement on terms mentioned in Ext.P3 could have been made by the Bank only at the Corporate Office level. In this case, the OTS was addressed to the Regional Manager and Ext.P3 was issued by the Branch Manager.

15. The learned Standing Counsel for the respondent-Bank relied on the judgment of this Court in ***Prasad and another V. Grave Chekkakkari Nadankari Padasekhara Committee and others [2018 (4) KLJ 673]*** to contend that since Ext.P3 agreement is by a mistake, as the parties were under a mutual mistake with respect to their respective rights, the agreement is liable to be set aside as having been proceeded upon a common mistake.

16. The learned Standing Counsel placing reliance on the judgment of the Hon'ble Karnataka High Court in

***Rathnam M. and others v. Susheelamma*** [AIR 2009 Kar 79], argued that when both parties proceeded with the transaction under a mistake as to fact that one of them had the authority to enter into an agreement, the mistake of fact is mutual and by virtue of Section 20 of the Contract Act, 1872, the agreement is void and unenforceable in law.

17. The learned Standing Counsel relied on the judgment of the Hon'ble Madras High Court in ***Sheeba Engineering Industries v. The State Bank of India*** [(2009) 3 CTC 362] to urge that an OTS signed in ignorance of a material fact is liable to be withdrawn. The learned Standing Counsel also relied on the judgment of the Apex Court in ***Badrilal v. Municipal Corporation of Indore*** [AIR 1973 SC 508] to urge the point.

18. In the petitioner's case, there is no dispute that the petitioner had made an offer of one-time settlement for ₹35.5 lakhs. The offer was addressed to the Regional Manager of the Bank. The acceptance of the offer was communicated to the petitioner by the Branch Manager. The petitioner acted

upon Ext.P3 and paid the amount due under Ext.P3 within the stipulated time. The Bank relied on Ext.R1(g) to contend that the Branch Manager or Regional Manager was not competent to enter into Ext.P3 settlement. Ext.R1(g) Circular provides for policy guidelines. The title to Ext.R1(g) itself states that it is a settlement/compromise 'policy'. Ext.R1(g) Circular requires the respondent-Bank to transact their business in a particular manner. That does not mean that whenever a direction given in the Circular is violated, the contract entered into by the Bank would be invalidated.

19. Ext.P3 states that the OTS proposal made by the petitioner for ₹35.5,00,00/- has been accepted by the competent authority. The petitioner had no reason to disbelieve the authority or competency of the Regional Manager or Branch Manager of the Bank to enter into Ext.P3 settlement. The petitioner has acted upon Ext.P3 and has discharged his obligations under the agreement. Respondents 1 to 3 did not repudiate the OTS till the petitioner paid the entire amount payable under Ext.P3.

Respondents 1 to 3 are therefore estopped from taking a stand that the OTS is void.

20. The judgments relied on by the respondents would not be of any assistance to them. In ***Prasad and another*** (supra), this Court was dealing with an agreement entered into under a mutual mistake. The mutual mistake must be as to a matter of fact essential to the agreement to render the agreement void. Violation of a policy advice by the Regional Manager or Branch Manager of the Bank, cannot be treated as a matter of fact essential to the Ext.P3 agreement.

21. The judgment of the Hon'ble Karnataka High Court in ***Rathnam M. and others*** (supra) related to allotment of a plot which the parties to the agreement erroneously treated as one transferring title to the property. In the present case, the authority of Branch Manager or Regional Manager of the Bank to enter into OTS is not under dispute. The contention is that as per policy guidelines prescribed, they ought to have left it to be decided by their Corporate Office. The judgment of the Apex Court in ***Badrilal*** (supra) was a case of statutory

incompetency of one of the parties to the agreement. The said judgment is also of no avail to respondents 1 to 3.

For the reasons stated above, the writ petition is allowed. Respondents 1 to 3 are directed to release all the documents deposited by the petitioner by way of security to the loan transaction covered by Ext.P3, within a period of one month.

Sd/-  
**N. NAGARESH, JUDGE**

aks/16.04.2021

**APPENDIX**

**PETITIONER'S EXHIBITS:**

- EXHIBIT P1 TRUE COPY OF THE STATEMENT ISSUED BY THE BANK FOR THE PERIOD COMMENCING FROM 9.12.2006 TO 28.3.2017.
- EXHIBIT P2 TRUE COPY OF THE LETTER DATED 18.3.2017 RECALLING THE OTS SANCTION ORDER.
- EXHIBIT P3 TRUE COPY OF THE LETTER DATED 15.1.2020 SANCTIONING THE ONE TIME SETTLEMENT.
- EXHIBIT P4 TRUE COPY OF THE RECEIPT FOR RS.5,50,000/- DATED 15.1.2020.
- EXHIBIT P5 TRUE COPY OF THE RECEIPT FOR RS.18 LAKHS DATED 11.3.2020.
- EXHIBIT P6 TRUE COPY OF THE RECEIPT FOR RS.7.5 LAKHS DATED 20.3.2020.
- EXHIBIT P7 TRUE COPY OF THE RTGS AMOUNT OF RS.4,50,000/- THROUGH HDFC BANK DATED 20.3.2020.
- EXHIBIT P8 TRUE COPY OF THE REQUEST SUBMITTED BEFORE THE 2ND RESPONDENT ON 21.3.2020 AND COPY OF THE RECEIPT ADDRESSED TO THE 2ND RESPONDENT.
- EXHIBIT P9 TRUE COPY OF THE PROCEEDINGS OF THE DISTRICT LEGAL SERVICES AUTHORITY.

**RESPONDENTS' EXHIBITS:**

- EXHIBIT R1 (a) TRUE COPY OF THE JUDGMENT DATED 25.11.2011 IN WPC 28398 OF 2011
- EXHIBIT R1 (b) TRUE COPY OF THE APPLICATION DATED 14.01.2020
- EXHIBIT R1 (c) TRUE COPY OF THE STATEMENT OF ACCOUNTS PERTAINING TO PETITIONERS LOAN ACCOUNT

- EXHIBIT R1 (d) TRUE COPY OF THE VALUATION REPORT DATED 28.03.2016 IN RESPECT OF THE PROPERTY BELONGING TO THE PETITIONER
- EXHIBIT R1 (e) TRUE COPY OF THE VALUATION REPORT DATED 28.03.2016 IN RESPECT OF THE PROPERTY BELONGING TO THE PETITIONERS MOTHER VASANTHI AMMA
- EXHIBIT R1 (f) TRUE COPY OF THE VALUATION REPORT DATED 20.07.2019 IN RESPECT OF THE PROPERTY BELONGING TO THE PETITIONER
- EXHIBIT R1 (g) TRUE COPY OF THE RELEVANT PORTIONS OF THE CIRCULAR BEARING NO.187-2013-BC-REC-10/08-08-2013
- EXHIBIT R1 (h) TRUE COPY OF THE RELEVANT PAGE OF CIRCULAT NO.030-2020 BC-RMD-05/17-01-2020 DATED 17.01.2020
- EXHIBIT R1 (i) TRUE COPY OF THE CALCULATION SHEET PERTAINING TO THE SACRIFICE TO BE MADE BY THE BANK MADE AT THE BRANCH LEVEL
- EXHIBIT R1 (j) TRUE COPY OF THE LETTER DATED 07.03.2020 ISSUED BY DEPUTY GENERAL MANAGER, RRB, CORPORATE OFFICE OF THE 1ST RESPONDENT.

ncd