

LEGAL UPDATES

SC: QUASHED HIGH COURT'S 'MANDAMUS' INSTRUCTING BANK TO 'POSITIVELY CONSIDER' AWARDING BORROWER AN OTS-SCHEME BENEFIT

In an appeal preferred by The Bijnor Urban Cooperative Bank Limited to quash the writ of Mandamus passed by the Allahabad HC, the issue before SC was the direction issued through the Writ to positively consider the application of the borrower (respondent) for One Time Settlement (OTS). The division bench of Justice B.V. Nagarathna and Justice M.R. Shah remarked that it was not possible to request the OTS Scheme's benefits as a matter of right and the same was subject to fulfilling the eligibility criteria mentioned in the scheme. The Appellant contended that the Respondent had not paid a single installment after borrowing a loan from the bank till an application for extending OTS benefit was submitted, and the bank initiated SARFAESI proceedings against the Respondent as their loan account was categorized as Non-performing Asset (NPA). SC observed that a person shall fall under the category of a defaulter person whose account was declared as NPA and who has not been able to pay even a single installment of the loan after borrowing it from the bank. Such a person was not eligible to be granted benefits under the OTS Scheme. SC also opined that the Appellant had been unable to recover its dues because the proceedings under SARFAESI Act remained pending for the past 7 years, the Appellant could not be held responsible for this delay and they had to make a decision to recover the entire loan amount in all possible way including auctioning the mortgaged property before granting the OTS Scheme benefits to recover less amount. SC concluded by stating OTS benefits cannot be prayed for as a matter of right and if such a prayer is entertained on the part of the borrower to direct the bank to grant OTS benefits then every other borrower who has the ability to pay dues as per the terms of the agreement entered by them would also like to get OTS benefits. Hence, SC quashed the Allahabad HC order.