Punjab and Haryana High Court

Justice Jaswant Singh, Justice Harinder Singh Sidhu

M/s Behl Roller Flour Mills v. Punjab & Sind Bank.

CM-1375-2021 in RA-CW-22-2021 in CWP-20250-2019

29.01.2021

Mr. A.P.S. Madaan, Advocate for applicants/Petitioners. Mr. J.S. Bhatia, Advocate for the Respondents-Bank. [through video conferencing]

***

CM-1375-2021

1. Applicant/Petitioner (Borrower) has filed the present application seeking review of the order dated 14.01.2020 (Annexure A-1), vide which after noticing One Time Settlement (OTS) between the parties, for Rs. 3.40 Crore, petitioners were permitted to deposit the said amount in Four Equated Quarterly Installments, which period came to an end on 13.01.2021.

2. Petitioner contends that out of Rs.3.40 Cr., admittedly 80% of the settlement amount i.e. Rs.2,70,15,000/- has already been deposited by the due date i.e. 13.01.2021, leaving a balance of Rs.69,85,000/-. They seek extension of 4 (Four) months, to make the payment of the remaining OTS amount. The petitioners contend that to arrange for the remaining amount they had entered into an agreement to sell of their property on 17.06.2020, pursuant to which they were expecting to receive the balance sale consideration from their vendees by 11.01.2021 i.e. the target date for execution of sale deed, which was well before the due date being 13.01.2021, fixed by this Court in its order dated 14.01.2020,to make the balance OTS payment to the bank. (Annexure **A-14**).

3. Unfortunately, in the month of December, 2020, the family of the vendee suffered 3 consecutive deaths in the family being her husband, son and daughter in law, after having been infected with COVID-19 virus. Consequently, the vendee demanded an extension for 4 months from the petitioner to complete the bargain (Annexure **A-9**). Petitioners have also placed on record the Bhog Ceremony Cards (Annexure **A-10**) to substantiate this factual averment. A request dated 13.01.2021 (Annexure **A-14**) was also submitted to the respondent praying for extension, but to no avail. Since petitioners could never anticipate these unforeseen circumstances, hence they seek an extension of 4 months to pay the balance OTS amount, which they undertake to deposit alongwith interest.

4. Learned Counsel for the petitioner relies upon Clause 16B the Settlement Policy of the Respondent Bank dated 08.08.2018 (Annexure A- 5), titled as "***Recovery Management Policy and Guidelines for Settlement / Right of in Borrowal***

Accounts" (Annexure **A-15**), as per which settlement amount can be paid in 12 months, which period can be extended for another 12 months, but not exceeding 24 months in total. Petitioner states that it's claim for extension of 4 months, is hence permissible even under the policy of the Respondent Bank.

5. He further relies upon a recent judgment passed by this Court in *Anu Bhalla and Anr. v. District Magistrate, Pathankot , (2020-4)200 PLR 572, bearing CWP No. 5518 of 2020 decided on 22.09.2020*, (Annexure **A-11**) wherein this Court, while relying upon the previous judgments of the Hon'ble Supreme Court and Division Bench of this Court, held that it would be permissible for the Court to extend the stipulated time period for payment of settlement amount in deserving cases. In the cited case, this Court had extended the time period by 6 months, subject to interest @ 9% per annum for defaulted period on the defaulted amount. This Court had laid down illustrative guidelines, to identify deserving cases while considering such requests. The petitioner submits that it complies with most of these guidelines and hence, is entitled for extension, as prayed for.

6. He further relies upon order dated 04.08.2020 passed by a Coordinate Bench of this Court in ***M/s Shri Krishna Dairy Farm v. Bank of Baroda bearing CWP No. 11201 of 2020*** (Annexure **A-12**) and order dated 30.07.2020 in ***M/s Jatindra Enterprises v. Bank of India CWP No. 7728 of 2020*** (Annexure **A-13**), wherein a Coordinate Bench this Court has granted similar extensions to pay the balance settlement amount, where inability was on account of lockdown due to COVID-19 pandemic.

7. On notice, Respondent bank has appeared through Counsel and has filed reply. It has been contended that sufficient time had already been given to the petitioner/borrower to pay the settlement amount. Further, the bank has already released a property worth Rs.2,16,35,000/-. The vendee of the said property namely Saroj Rani had earlier purchased ½ of the said released property, after taking financial assistance from the Respondent Bank. The plea of the petitioner, that his vendee is seeking time, is an afterthought. The petitioner did not deposit even the quarterly installments on time though, it is not disputed that the petitioner by now has infact deposited almost 80% of the settlement amount

8. Learned Counsel for the respondent, states that no benefit can be given to the petitioner on the basis of the One Time Settlement Policy of the Bank, as settlement in question was done with the intervention of this Court. He further relies upon the judgment passed by a Coordinate Bench of this Court in *M/s Milkhi Ram Bhagwan Dass v. District Magistrate* bearing CWP No. 327 of 2020 decided on 23.12.2020, to contend that once the terms and conditions of the OTS are violated and the settlement amount is not paid within the agreed time frame, no further extension can be granted by this Court and the settlement is deemed to have been cancelled. He thus prays for dismissal of the present application.

9. We have heard both the learned Counsels and with their able assistance perused the record as well.

10. Having considered the totality of the circumstances, we find that plea of the applicant/petitioner merits acceptance for the following reasons :-

*i. Firstly, the plea of the petitioner is supported by the Clause 16B of the OTS Policy titled as "**Recovery Management Policy and Guidelines for Settlement / Right of in Borrowal Accounts**" dated 08.08.2018 (Annexure A-5), which reads as under :-*

"16(B) EXTENSION / CONDONATION OF DELAY IN PAYING SETTLEMENT AMOUNT

The normally acceptable time in making payment of settlement amount alongwith interest is 12 months w.e.f. the date of intimation of sanction to the borrower. If sanction initially stipulates a repayment period less than 12 months, the same can be extended/condoned upto 12 months by the sanctioning authority. ***There can also be cases where there is delay in repayment of settlement amount with interest which was initially sanctioned upto 12 months but the same is paid / proposed to be paid within a total repayment period of more than 12 months but not exceeding 24 months.***

In such exceptional cases after recording proper justification ***an extension / condonation of delay can be considered*** *as under, subject to charging interest at one year MCLR (as applicable at the time of settlement) PLUS 2.5% p.a. compounded monthly, on the defaulted amount for the period of delay , beyond the 12 months period (during which the interest would be chargeable on simple basis)*

xxxx xxxxxxx"

It is thus evident that the OTS Policy itself provides for a provision of permitting an extension in the OTS period. The petitioner has claimed an extension for 4 months, which is well within the permissible parameters provided under the OTS Policy itself. As regards the contention that the benefit of Policy cannot be extended because the settlement is stated to be in the Court, the said argument is misplaced for the reason, as it is not the case of the respondent bank that the said settlement had taken place beyond the ambit of the Policy nor is the case of the bank that it can accept a settlement beyond the policy of the bank.

ii. Secondly, the record reveals that the petitioner has already paid 80% of the settlement amount out of the total settlement amount of Rs. 3.40 Cr. by the due date i.e. 13.01.2021. Since substantial portion of the settlement amount stood deposited within the time originally agreed upon by the parties, the plea of the petitioner can be considered favorably.

iii. Thirdly, the reason which led to delay, i.e. three consecutive deaths in the family of the vendee of the petitioner on account of COVID-19 pandemic, being her husband , son and daughter in law, for which petitioner has placed on record Kriya Ceremony Cards is also an acceptable reason to claim an extension.

iv. Fourthly, the time period being demanded by the applicant/petitioner is 4 months which is a reasonable period to pay off the remaining OTS amount.

11. In view of above, we find that the petitioner does qualify most of the illustrative guidelines laid down by this Court in the case of Anu Bhalla supra. In the case of Anu Bhalla supra this Court held that an extension of time period to pay the remaining OTS amount

would be permissible for a deserving and a bonafide borrower (refer to Para 22-24 of the Judgment). In order to identify such deserving cases, various illustrative guidelines, were laid down in Para 25, on the basis of which such requests for extension to pay the remaining OTS amount could be considered. Reliance was placed on the judgment of Hon'ble Supreme Court in P. Vijayakumari v. Indian Bank Represented by its Chief Manager 2018 AIR SC 759; State Bank of India v. Vijay Kumar (2007-3)147 PLR 081 (SC) , 2007 (11) SCC 369 and various judgments of Division Bench of this Court i.e. Satkartar Ice & General Mills v. Punjab Financial Corporation, 2006 PLRonline 0008, 2008(1)-ISJ Banking-248 ; Lord Budha Society v. State Bank of India (2013-3)171 PLR 146,; M/s A-One Mega Mart Private Limited v. HDFC Bank & others (2013-1)169 PLR 688 and M/s Malhan Industries Private Limited v. Punjab National Bank-2015(67)-RCR(Civil)-782, wherein also similar requests made by the borrower were allowed, subject to payment of interest on the defaulted amount for the delayed period. Apart from above, this Court also had an occasion to examine OTS Policies of various Banks including State Bank of India, Punjab National Bank , Punjab and Sind Bank, for illustrative purposes, to notice that the OTS Policies of the Bank itself provide for an extension of OTS in deserving cases. Relevant paras of the said judgment in Anu Bhalla reads as under :-

19. Not only the judgments of this Court, the issue has now been settled with recent the judgment of Hon'ble Supreme Court in P. Vijayakumari v. Indian Bank 2018 AIR (SC) 759, wherein also appellants could not make timely payment of the settlement amount and were seeking extension of time to make the balance payment of settlement. The facts of the case were, that a settlement had taken place on 10.09.2004, whereby the parties had agreed for an amount of Rs. 34.50 Lakhs which was payable within 3 months. The appellant could not pay within the stipulated time period but paid Rs. 3 Lakhs on 08.02.2005 and a further sum of Rs. 35 lakhs on 17.10.2006, in terms of the conditional order passed by Debt Recovery Appellate Tribunal (DRAT) while staying the auction of the mortgaged property. Another sum of Rs.3 lakhs was paid on 29.10.2006, with which the total amount paid by the appellants, came to be Rs.41 lakhs by 29.10.2006. ***As against the original period of 3 months, the appellants-therein had taken about 2 years to deposit the said amounts.*** *Aggrieved against the conditional interim order of deposit made by DRAT, the bank approached the High Court, which allowed the petition and had set aside of the impugned order of DRAT.*

Xxxx xxxxxx

A perusal of the above would reveal, that if the agreed amount stood paid with some delay, condonation of delay is a possible course of action, if the grounds for delay justified a departure from what was agreed upon ***i.e. the right of the bank to recover the entire dues.*** *It further held that it would depend on facts of each case, of its entitlement to claim condonation of delay and the terms at which such delay could be condoned i.e. a higher rate of interest (like 24% in the above cited cases for 2 years of delay) on delayed payment in terms of the OTS, to compensate the creditor/bank.*

Xxxx xxxxxx

*21. We have been informed that many of the banks have already provided for an extension of One Time Settlement under their respective Settlement Schemes itself. Such self contained provision enables the respective banks itself to extend the period of settlement, as originally agreed for between the parties. For the purpose of illustration, we notice that Punjab National Bank formulated a One Time settlement scheme titled as "**Policy on Compromise/Negotiated Settlement/Write Off/Waiver ofLegal Action/Appeal etc."**, dated 20.02.2016, in which **Clause 24** deals with the "Payment Terms of OTS Amount" and **Clause 25** deals with "Extension of Time Period for Payment of OTS Amount".*

Xxxx xxxxxx

*Apart from above, we have found a similar provision in the One Time Settlement Policy of Punjab and Sind Bank as well, by the name of "**Recovery Management Policy and Guidelines for Settlement / Writeoff in Borrowal Accounts (Amended)" dated 08.08.2018**, which also provides for extension of time in OTS……*

xxxx xxxxxx

*We have been informed that keeping in view the current situation where the entire country has been adversely effected by COVID-19 pandemic, even State Bank of India, granted extension to all its borrowers who had settled their accounts under One Time Settlement Scheme by the name of **SBI – OTS – 2019** wherein the last date of deposit of settlement was 31.03.20, which was first extended to 30.06.2020 and then to 30.09.2020. Ld. Counsel for the petitioner has brought to our notice one letter dated 26.08.2020 , granting extension in time to pay the remaining settlement amount, written by the Deputy General Manager of State Bank of India , Stressed Assets Management Branch, Zonal Office Building, Civil Lines, Ludhiana to one of its borrowers which had settled the account under the OTS Scheme as mentioned above, the relevant extract of the said letter reads as under :-*

*" As per the SBI OTS 2019 you were required to make the payment of Rs. 11,49,98,166/- upto 31.03.2020 and the said **period stands extended upto 30.06.2020** by the bank and it was extended upto 31.08.2020 and **now further extended upto 30.09.2020** with the interest @ MCLR for 3 months to be charged on the amount to be paid for the extended period of 3 months i.e. from 01.07.2020 to 30.09.2020".*

[Emphasis supplied]

It is thus clear from the above few illustrations, that the banks themselves, have the discretion to extend the period of OTS keeping in view attending and demanding circumstances, which is only to ensure that ultimately the purpose of settlement is achieved.

22. We are conscious of the fact, that each Institution has its own set of settlement policies but the reference of the aforesaid three settlement schemes by the three nationalised banks is only for illustrative purpose to bring home the point, that looked

even from the perspective of the Financial Institutions, One Time Settlement is not cloaked with such rigorous principles which may not permit extension of period to pay the remaining/balance settlement amount. Had that been so, the banks itself would ***not*** *have provided for an extension clause in their respective settlement policies.* ***If the settlement policies of the banks itself provide for an extension subject to payment of interest, there is no reason to hold that the Courts in exercise of their equitable jurisdiction under Article 226 of the Constitution of India, cannot extend such time period of settlement.****(Emphasis Supplied)*

12. However, to be fair to the learned Counsel for the respondent, we would deal with his argument regarding reliance placed by him upon the judgment of a Coordinate Bench of this Court in Milkhi Ram Bhagwan Dass supra to contend, that no extension can be claimed by the borrower on expiry of the original time provided for in the OTS. The relevant extract of the said judgment reads as under:-

"14. Learned counsel for the petitioner has also placed reliance on Anu Bhalla's case (supra) in order to show that time for repayment of the balance settled amount could be extended by the Court in deserving cases. ***We are of the view that the Anu Bhalla's case (supra) is distinguishable from the case of the petitioner in facts and otherwise also.*** *In Anu Bhalla's case (supra), OTS was effected between the borrowers and the bank for Rs.1.60 crore and in compliance of the same, the borrowers deposited a sum of Rs.83.80 lakhs, but could not make the remaining payment. It means that in the referred case, the borrowers deposited more than 50% of the settled amount before they committed default. However, in the case in hand, the borrower effected OTS for Rs.1.29 crore and made payment of Rs.51 lakhs only when it defaulted. So, in the present case, the amount paid was just 40% of the settled amount. Also in this case, reasons put forth by the petitioner for failure to pay the balance amount, are not plausible. So the petitioner cannot take any benefit of the judgment rendered in Anu Bhalla's case (supra).*

15. The Division Bench of Allahabad High Court in Union Bank of India case (supra) has clearly held that no separate orders are required to be passed in the matter of the OTS having become defunct for non-compliance of its conditions by the borrowers and the logical consequence in case of breach of the terms and conditions of the OTS is that the Bank becomes free to recover the money outstanding in accordance with law irrespective of the OTS."

A perusal of the same, we find that it places substantial reliance on the judgment of Allahabad High Court in ***Union Bank of India v. Anil Kumar Wadhera 2017 (8) ADJ 115,*** to ultimately come to the conclusion that no separate orders are required to be passed in the matter of OTS having become defunct for non-compliance of its conditions by the borrowers and the logical consequence in case of such breach is that the Bank becomes free to recover the money outstanding in accordance with law irrespective of the OTS.

13. In our opinion, we find that the judgment of Allahabad High Court in ***Union Bank of India*** *supra*, was quite distinguishable and could not have been applied to lay down such principle as has been culled out in the case of Milkhi Ram, for the following reasons :-

i. The said judgment was delivered by Allahabad High Court on 12.05.2017, whereas subsequently, Hon'ble Supreme Court in the case of P. Vijayakumari v. Indian Bank Represented by its Chief Manager 2018 AIR SC 759 , decided on 17.01.2018, while reversing the judgment of Madras High Court in Indian Bank v. P. Vijayakumari 2008 AIR Madras 45, held that an extension in OTS would be a permissible course of action, which could be considered in deserving cases. In the said case parties had entered into an OTS for Rs. 34.50 Lacs on 10.09.2004, which was to be paid within 3 months. The borrower defaulted the terms of payment of OTS amount, but paid intermediate amounts sum totaling to Rs. 41 Lacs by 29.10.2006. The borrower prayed for extension of time period and condonation of the delay of almost 2 years in clearing the OTS amount. The Hon'ble Supreme Court held that if the agreed amount stood paid though with some delay, condonation of the delay is a possible course of action, if the grounds for delay justified a departure from what was also agreed upon, i.e., right of the Bank to recover the entire dues.The relevant extract i.e. Para 9 to 11 of the judgment of the Hon'ble Supreme Court reads as under :-

"9. In the facts of the present case, the view taken by the learned Appellate Tribunal (DRAT), as noted above, cannot be said to be so wholly unreasonable or unsustainable so as to justify interference by the High Court. ***If the agreed amount stood paid though with some delay, condonation of the delay is a possible course of action, if the grounds for delay justified a departure from what was also agreed upon, i.e., the right of a Bank to recover the entire dues.*** *All would depend on the facts of each case.* ***Having regard to the totality of the facts of the present case, we are of the view that the ends of justice would be met if for the delay that had occurred, the appellants are made liable to pay simple interest*** *@ 24% p.a. on the amount of Rs. 34.5 lakhs (as agreed to in the LokAdalat) for the period from the date of the Award of LokAdalat, i.e., 10.09.2004 to the date of last payment, i.e., 29.10.2006. In addition, a further amount of Rs. 10 lakhs to be paid by the appellants to the respondent-Bank as compensation and costs.*

10. The above amounts will be paid by the appellants to the respondent-Bank within a period of 45 days from today failing which the respondent-Bank may understand the present order to be recalled and the mortgaged property to be open for auction/disposal in accordance with law.

11. Consequently, the appeal shall stand allowed to the extent indicated above. The impugned order passed by the High Court is set aside." *(Emphasis Supplied)*

Hon'ble Supreme Court while condoning the delay of about 2 years,imposed a higher rate of interest of 24% for the delayed period. Thus, in view of this judgment, it would not be correct to lay down an absolute proposition that no extension can be permitted, even in deserving cases.

ii. Further, the Court did not consider, a noticeable feature that many of the Banks OTS Policy, itself provide for a provision to condone the delay, as is there in the present

case, as well. Such provisions signify that no doubt OTS does provide for a timeline which ought to be adhered to, but if for some reasons beyond the control of the borrower, the same is unable to be adhered to, the Policy itself provides for relaxation in the shape of extension of time to pay the balance settlement amount. Thus, to hold that extension of OTS is not possible at all, may not be a correct proposition.

Iii. Furthermore, Allahabad High Court was dealing with a situation where settlement had taken place for Rs. 75 Lacs on 22.08.2006, out of which Rs. 10 lacs was to be paid within a week and the remaining by 20.09.2006. The borrower deposited only Rs. 10 Lacs during this period and defaulted payment of the remaining amount under the OTS. The guarantor approached the Court, and twice opportunity was granted to make the balance OTS amount, by extending the time period, which was also acknowledged by the bank. ***When inspite of the extensions, OTS amount was not paid, the Division Bench held that no further extension could have been granted after expiry of more than 2 ½ years as sufficient indulgence had already been shown to the borrower.*** *Moreso, during the interregnum the bank had already sold off the secured asset. The relevant extract of the said judgment reads as under :-*

"34. We are therefore of the considered opinion that the learned Single Judge had committed an error in coming to a conclusion that since no further order had been passed for cancelling the OTS by the Bank subsequent to the order passed by the Writ Court, the same would survive inasmuch as in our opinion, no such order is required to be passed under law. ***We may further record that orders which were passed by the High Court on 19.2.2007 and the letters written by the Bank dated 18.2.2007 and 7.8.2007 at best can be read to mean that the time for depositing of the money in terms of the OTS stood extended upto the date mentioned in the order/letters and nothing beyond it****. Admittedly the money was not deposited by the guarantor* ***within the time so extended****. This fact is recorded by the learned Single Judge in his order itself.*

35. The Apex Court in the case of ***M/s Sardar Associates &ors. v. Punjab and Sindh Bank &ors. AIR 2010 SC 218*** *has subsequently directed that the compromise between the borrower and the bank is to be in accordance with the RBI guidelines which had necessarily to be followed, and are binding upon the Public Sector Banks.*

36. We are of the opinion that the Writ Court could not have condoned the delay of two and a half years in deposit of the OTS money in its entirety in exercise of powers under Article 226 of the Constitution of India as the same would amount to rewriting of the terms of the contract/settlement entered into between the parties. *The logical consequence of non-compliance of the orders of the High Court by the borrower would be that OTS failed to have any legal sanctity and the Bank was therefore free to proceed with the recovery of its dues in terms of decree/recovery certificate issued by the Recovery Officer, Debt Recovery Tribunal. There had been no immaterial irregularity in the auction of the mortgaged property which could have required the High Court to interfere in exercise of powers under Article 226 of the Constitution of India. The Apex Court in case of* ***Ram Kishun v. State of U.P., (2012)***

11 SCC 511 *has held that sale confirmation under the Debt Recovery Act need to be set aside except in case of fundamental procedural error or misrepresentation or fraud.* ***”***

Thus, in the said case, the borrower did get an extension but failed to comply even within the extended timeline. **In the backdrop of the above quoted paragraphs,we are of the considered opinion that the aforesaid judgment cannot be interpreted to have laid down an absolute principle of law, that no extension is permissible beyond the last date of OTS, as is sought to be culled in the judgment of *Milkhi Ram*. Rather the principle which can be culled out from the said judgment is that multiple extensions cannot be granted to a borrower to make the payment of OTS amount, which was one of the observations in Anu Bhalla’s case and we too subscribe to the said view.** The judgment therefore is completely distinguishable on facts and law both.

14. Apart from above, in our humble and considered opinion, we have not been able subscribe to the judgment of *Milkhi Ram*, rather we find that the same is *per incuriam* and hence does not set a binding precedent, as it omits to consider the existing judgment of Hon’ble Supreme Court in the case of *P. Vijayakumari v. Indian Bank Represented by its Chief Manager 2018 AIR SC 759; State Bank of India v. Vijay Kumar (2007-3)147 PLR 081 (SC) , 2007 (11) SCC 369* and various judgments of Division Bench of this Court i.e. *Satkartar Ice & General Mills v. Punjab Financial Corporation, 2006 PLRonline 0008, 2008(1)-ISJ Banking-248 ; Lord Budha Society v. State Bank of India (2013-3)171 PLR 146,; M/s A-One Mega Mart Private Limited v. HDFC Bank & others (2013-1)169 PLR 688* and *M/s Malhan Industries Private Limited v. Punjab National Bank-2015(67)-RCR(Civil)-782*.A perusal of the judgment of Milkhi Ram shows, that the above judgments have not been considered and dealt with. The consistent view taken by the Hon’ble Supreme Court which has been followed by the Division Bench of this Court, is that an extension in OTS is a permissible course in deserving cases. On the other hand the judgment of *Milkhi Ramsupra,* whichplaces solitary reliance on the judgment of Allahabad High Courttakes a diametrically opposite view, to hold that no claim for extension is maintainable at the hands of the borrower. This according to us,cannot be treated to be a correct position of law, to completely foreclose the rights of the petitioner.

15. Hon’ble Supreme Court in ***Narmada BachaoAndolan v. State of Madhya Pradesh 2011 (7) SCC 639***, while dealing with the principle of “*per incuriam”*held in para 61 of the judgment as under :-

61. Thus, “per incuriam” are those decisions given in ignorance or forgetfulness of some statutory provision or authority binding on the Court concerned, or a statement of law caused by inadvertence or conclusion that has been arrived at without application of mind or ***proceeded without any reason so that in such a case some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong.***

Further, Hon’ble Supreme Court in ***K. Panduranga v. State of Karnataka 2013 (3) SCC***

721 **,**in para No. 30-34, held as under :-

"30. Presently, we shall proceed to deal with the concept of per incuriam. In ***A.R. Antulay v. R.S. Nayak, (1988)2 SCC 602,*** *Sabyasachi Mukharji, J. (as His Lordship then was), while dealing with the said concept, had observed thus :-*

"42. ... 'Per incuriam' are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong."

31. Again, in the said decision, at a later stage, the Court observed :-

"47. ... It is a settled rule that if a decision has been given per incuriam the court can ignore it."

32. In ***Punjab Land Development & Reclamation Corpn. Ltd. v. Labour Court, (1990)3 SCC 682,*** *another Constitution Bench, while dealing with the issue of per incuriam, opined as under :*

"40. The Latin expression 'per incuriam' means through inadvertence. A decision can be said generally to be given per incuriam when this Court has acted in ignorance of a previous decision of its own or when a High Court has acted in ignorance of a decision of this Court."

33. In ***State of U.P. v. Synthetics and Chemicals Ltd., (1991)4 SCC 139,*** *a two-Judge Bench adverted in detail to the aspect of per incuriam and proceeded to highlight as follows :*

"40. 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. ***(Young v. Bristol Aeroplane Co. Ltd., (1944)2 All ER 293 (CA))*** *Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law."*

34. In ***Siddharam Satlingappa Mhetre v. State of Maharashtra, 2011(1) R.C.R.(Criminal) 126 : 2010(6) Recent Apex Judgments (R.A.J.) 581 : (2011)1 SCC 694,*** *while addressing the issue of per incuriam, a two-Judge Bench, after referring to the dictum in Bristol Aeroplane Co. Ltd. (supra) and certain passages from Halsbury's Laws of England and Raghubir Singh (supra), has stated thus :*

"138. The analysis of English and Indian Law clearly leads to the irresistible conclusion that not only the judgment of a larger strength is binding on a judgment of smaller strength but the judgment of a co-equal strength is also binding on a Bench of Judges of co- equal strength. In the instant case, judgments mentioned in paras 124 and 125 are by two or three Judges of this Court. These judgments have clearly ignored the Constitution Bench judgment of this Court in ***Sibbia case, (1980)2 SCC 565*** *which has comprehensively*

dealt with all the facets of anticipatory bail enumerated under Section 438 of the Code of Criminal Procedure. Consequently, the judgments mentioned in paras 124 and 125 of this judgment are per incuriam." (Emphasis Supplied)

16. Still further Hon'ble Supreme Court in *Sundeep Kumar Bafna v. State of Maharashtra 2014 (16) SCC 623* , in Para No. 15 held as under:-

"15. It cannot be over-emphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of Courts would become a costly casualty. ***A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the Court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a Co-equal or Larger Bench; or if the decision of a High Court is not in consonance with the views of this Court.*** *It must immediately be clarified that the perincuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar.* ***We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam."***

(Emphasis supplied)

A perusal of the above judgments would reveal, that if a judgment has been rendered which does not consider the binding precedent i.e. an existing judgment of Hon'ble Supreme Court on the issue involved, not only would it render the said judgment as per incuriam, but the same can be ignored, while deciding an issue at hand, as the same cannot be treated to have laid down any binding precedent. Not only this, even if the conclusion is without any reasoning or the same is demonstrably wrong, the same would also be treated as per incuriam.

17. That apart, the judgment in *Milkhi Ram* though notices the judgment of *Anu Bhalla supra* but does not appear to have consider a noticeable feature in the banking practice i.e. the existing OTS Policies of various banks, as was considered in *Anu Bhalla supra (*refer to para 21 of the Judgment), which itself provide for extensions in deserving cases. If the judgment of *Milkhi Ram* is to be applied to hold that no extension in OTS is possible, it would render all such portions of OTS Policies of the banks as unsustainable which provide for extensions, which again would not be a correct position to hold.

18. The judgment of Milkhi Ram also misses a very important aspect i.e. the rationale behind OTS, which is also to be considered which examining a plea for extension of OTS. A Division Bench of this Court while granting extension in OTS in ***Lord Budha Society v. State Bank of Patiala 2013 (3) PLR 146***, discussed the rationale and object of OTS. Para 13 and 14 of the judgment reads as under:-

"13. In view of the said fact, the Bank is entitled to the interest for the delayed payment of

the settlement arrived at on 11.08.2011. Since the petitioners have deposited the amount and also paid the interest up to 30.03.2013, as per the calculations given by the Bank, ***we do not find any merit in the argument that the Bank has right to revoke the settlement.***

14. The settlement arrived at is in public interest, as it ensures payment of the due amount to the Bank and also absolves the Public sector undertaking to take recourse of cumbersome process of sales of assets by auction. Therefore, in the larger public interest, the payment of the settled amount along with accrued interest is considered appropriate."

19. Not only this, the object and rationale was also considered by this Court in Para No. 23 and 24 of the judgment of ***Anu Bhalla supra*** which reads as under:-

"23. Further, it is also to be noticed, that invariably in all the settlement schemes or the policies, there are already sufficient checks and balances to identify eligible borrowers to whom such concessions can be extended to lead to an OTS. It is needless to mention that settlement takes place, only after the case of the borrower has been tested on the basis of criteria of eligibility for settlement provided under the scheme or policy itself. For example we see, that cases of wilful default and fraud are normally excluded. ***Once the borrower is found to be eligible and a settlement takes place, it is important to keep in mind, that during the period of settlement, minor differences inter alia extension to pay the remaining settled amount in deserving cases, are creased out, equities are balanced in terms of the policy itself by the bank officials so that the settlement achieves its final goal, aimed at the betterment of both the parties. An amicable settlement is drawn up to achieve a win-win situation for both the creditor and debtor. The former is able to recover the amounts, in a more simplified manner and then use the same in its commercial cycle to pump in more liquidity and resultant revenues. On the other hand, the latter is able to settle a long dispute so as to focus its attention to a more productive field, rather than being involved in a litigative sphere. In such a situation, a deserving borrower, who has deposited substantial amounts within the originally stipulated period of settlement, proved his bona fides and is willing to clear the remaining in a reasonable period, and compensate the creditor with interest for the period of delay, should be considered with some flexibility to achieve the ultimate aim of such settlements. It is with this perspective, that extensions can be considered to be granted to deserving cases.***

24. Thus, in view of above, we answer this issue in ***AFFIRMATIVE*** *and hold that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India would have the jurisdiction to extend the period of settlement as originally provided for, in the OTS letter."*

(Emphasis Supplied)

20. Further, a Division Bench of this Court in *Punjab Chemicals v. District Magistrate 2014 (51) RCR (Civil) 438,* examined the issue as to which judgment is required to be followed, where there are two conflicting judgments of equal strength of the Hon'ble Supreme Court. In the cited case, there were two judgments of Hon'ble Supreme Court of equal strength

and the later judgment laid a different proposition as compared to one laid down in the previous judgments. It was held that the High Court must follow the judgment which appears to it to lay down the law more elaborately and accurately. Para 9 and 10 of the said judgment reads as under:-

"9. Thus, there is apparent conflict between the Coordinate Benches of the Hon'ble Supreme Court. A Full Bench of this Court in ***M/s Indo Swiss Time Limited Dundahera v. Umrao and others, 1981 PLR 335****, has examined the issue as to which of the contradictory judgments passed by the coordinate Bench of the Superior Court, is to be followed.* ***It was held that the High Court must follow the judgment which appears to it to lay down the law more elaborately and accurately.*** *The Court held as under:-*

"23. When judgments of the Superior Court are of co-equal Benches and therefore of matching authority then their weight inevitably must be considered by the rationale and the logic thereof and not by the mere fortuitous circumstances of the time and date on which they were rendered. ***It is manifest that when two directly conflicting judgments of the superior Courts and of equal authority are extent then both of them cannot be binding on the Courts below. Inevitably a choice though a difficult one, has to be made in such a situation. On principle it appears to me that the High Court must follow the judgment which appears to it to lay down the law more elaborately and accurately.*** *The mere incidence of time whether the judgments of co-equal Benches of the Superior Court are earlier or later is a consideration which appears to me as hardly relevant."*

10. After hearing learned counsel for the petitioner, we find that the petitioner has an effective alternative remedy to approach the Debts Recovery Tribunal, under Section 17 of the Act, in terms of the judgments referred to above.

11. In view of the contradictory judgments of the Coordinate Benches of the Hon'ble Supreme Court, we are more inclined to follow the earlier judgments of the Hon'ble Supreme Court, which provide a remedy to the borrower/lessee against an action of the District Magistrate under Section 14 of the Act. Such course provides a remedy to the lessee including the borrower, whereas in the absence of such course, the remedy would be to approach this Court, wherein it will not be appropriate to decide the questions of fact and/or mixed questions of law and facts. It would also lead to confusion amongst the borrowers and/or the lease as to which forum they should invoke. It would be in interest of justice that all actions of the secured creditors or of the District Magistrate are firstly challenged under Section 17 of the Act before the Tribunal."

(Emphasis supplied)

Applying the aforesaid principles of law, we find that the judgment of *Anu Bhalla* ,lays down the law more elaborately and accurately, after discussing the judgments of the Hon'ble Supreme Courts as also the previous judgments of Division Bench of this Court. It lays down the principle in tune with the principles culled out in the said judgments. This is also in consonance with the principles of *stare decisis* and *consistency* as laid down by the Hon'ble

Supreme Court in *Government of Andhra Pradesh v. A.P. Jaiswal 2001 (1) SCT 362*(3 Judges) which was followed by the Hon'ble Supreme Court in *Arasmeta Captive Power Company Private Limited v. Lafarge India Private Limited 2013 (15) SCC 414.*

On the other hand, the judgment of Milkhi Ram, since neither considers the judgments of Hon'ble Supreme Court nor the previous judgments of Division Bench of this Court, rather even misses the point culled out in judgment of Union Bank of India rendered by Allahabad High Court, deprecating repeated and long extensions, we are therefore more inclined to follow the judgment in Anu Bhalla's case. In our considered opinion, the judgment in Milkhi Ram, is per incuriam, much less a binding precedent. Hence, we are unable to agree with the contention of the respondent and hold that the reliance placed upon the judgment in the case of Milkhi Ram is misplaced.

21. The offshoot of the above discussion is that the application of the petitioner stands **allowed**. The petitioner is granted an extension of 4 months time period w.e.f. 14.01.2021 to make the payment of the remaining settlement amount. However, to balance the equities, the petitioner shall be liable to pay interest @ 9% per annum simple for the delayed period on the defaulted amount of settlement.

22. It is made clear that if there is any further default on the part of the petitioner, the Respondent bank shall be at liberty to recover its dues by resorting to remedies in accordance with law.

SS