

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2160 OF 2007

U.P.FINANCIAL CORPORATION & ORS. ... APPELLANTS

VERSUS

M/S SRI BHARAT PAPER UDYOG P.LTD. & ORS. ... RESPONDENTS

JUDGMENT

Aftab Alam, J.

1 This appeal, by grant of special leave, at the instance of UP Financial Corporation and its officials is directed against the judgment and order dated September 7, 2006 passed by a division bench of the Allahabad High Court on a writ petition (C.M.WP. No. 43800/2006) filed by the respondent company. By the impugned order, the appellants are directed to issue the no-

dues certificate to the writ petitioner-respondent, release to it the title deeds of the disputed plot and to hand over to it the possession of the property (mortgaged in the favour of the appellant Corporation). The High Court order is based on the premise that it was a term of the one time settlement between the two sides that on payment of the first installment under the settlement by the respondent, the Corporation would release in its favour a piece of land, 4000 sq. yds. in area, which the respondent might sell or give on lease in order to facilitate payment of the remaining installments under the OTS. The High Court found that contrary to its obligation under the OTS, the appellant Corporation did not release the land in question in favour of the respondent. The respondent, therefore, could not be held responsible for the delay in payment of the installments under the OTS and the liability of interest on delayed payments could not be fastened on it. The High Court held that the Corporation's insistence on realizing from the respondent the amount of interest on delayed payments of the installments (a substantial sum!) even after it had paid the full amount under the OTS was unjust, unreasonable, bad and illegal. Hence, the directions to the appellant Corporation as noted above.

2. The respondent company took a loan from the appellant Corporation. It defaulted in repayment of the loan and with accumulation of interests the

outstanding dues grew to a very large sum. According to the appellant, by the time the respondent was allowed the facility of OTS, the accumulated interests amounted to almost Rs.3 crores, which the Corporation waived off.

3. Be that as it may, the respondent made an application to the appellants for a one time settlement of its outstanding dues. The application was accepted by the appellants and intimation was given to the respondent vide letter dated August 5, 2002 containing the terms of the settlement. The relevant terms of the settlement as stipulated in the aforesaid letter are as under –

“1. That the settled amount of Rs. 28,50,000/- under OTS shall be paid as under:

(i) Earnest Money (Already Paid)	Rs. 2,85,000.00
(ii) Down payment within one month i.e. upto 04.09.2002	Rs. 4,28,000.00
(iii) Balance within 8 equal quarterly installments of Rs. 2,67,125/- each, commencing from 15.11.2002	Rs. 21,37,000.00

Total	Rs. 28,50,000/-

The repayment schedule as mentioned above should be strictly adhered to and any deviation will be liable for cancellation of facilities granted under One Time Settlement while you will be entitled for interest free period upto 20.09.2002 Interest @ 16% shall be payable on outstanding OTS amount after interest free period which shall be payable quarterly on 20th March, 20th June, 20th September and 20th December.

1. That the installments of OTS fixed will not be in any case linked with the sale of assets of the unit

**and the OTS installments fixed on schedule dates
will be paid by the party on the due dates.”**

(emphasis added)

4. In the letter dated August 5, 2002 by which the respondent's application for one time settlement of its dues was accepted by the Corporation, there is absolutely nothing to suggest that on payment of the first installment within one month i.e. by September 4, 2002, the Corporation would release the piece of land in question to the respondent so as to facilitate payment of the subsequent installments by it by selling or leasing out the land.

5. According to the respondent, however, the terms contained in the letter dated August 5, 2002 are not conclusive on the issue. The one time settlement was arrived at after a protracted negotiation involving, besides the respondent company and the appellant Corporation, the Divisional Udyog Bandhu, Meerut. Further, in course of the negotiations certain terms had been arrived at which were finally formalized in the OTS. The counsel appearing for the respondent invited our attention to a letter dated July 3, 2002 addressed on behalf of the respondent to the Additional Director of Industries (WZ), Meerut. In this letter, after referring to the decisions of the Divisional Udyog Bandhu, Meerut, dated November 1, 1999 and March 14, 2001 and further referring to the discussions held between the parties, it was

stated that the OTS with the Corporation would be finalised and settled under certain terms mutually agreed between the parties as enumerated from paragraph 1 to 4 of the letter. Paragraph 4 on which the counsel laid great stress reads as under –

“(4) Balance 75% of settled O.T.S. amount is payable within 2 years in 8 equal quarterly installments upto July 2004 with applicable simple interest as per O.T.S. matrix and guidelines of the Corporation **after release of spare factory land of 4000 sq. yds. as per settlement.**”
(emphasis added)

6. The counsel also referred to a letter dated August 22, 2006 from the General Manager of the Corporation to the Executive Director, Udyog Bandhu, Lucknow. In paragraph 4 of the letter there is a reference to the release of 4000 sq. yds. of land of the respondent’s unit, subject to certain conditions.

7. He also referred to the minutes of the regional industrial meeting held on June 22, 2006 under the Chairmanship of the Industrial Development Commissioner, UP. In those minutes too there is some reference that even after having received 25% of the OTS amount the Corporation had not released the land in question in favour of the respondent.

8. The main emphasis of the counsel for the respondent, however, was on the letter dated July 3, 2002 and it was contended that the condition

contained in paragraph 4 of that letter (as quoted above) must be construed as one of the conditions of the OTS, binding upon the Corporation.

9. Counsel for the appellants, on the other hand, submitted that there was no such condition in the OTS. On the contrary, the OTS made a clear stipulation as to levy of interest on delayed payments of the installments.

10. In view of the divergent stands of the parties we asked the counsel for the Corporation to produce the original records, including the original copy of the letter dated July 3, 2002, that was submitted on behalf of the respondent to the Corporation. In pursuance of our direction, the original record was produced before the court.

11. In the original copy of the letter dated July 3, 2002 paragraph 4 reads as follows –

“(4) Balance 75% of settled O.T.S. amount is payable within 2 years in 8 equal quarterly installments upto July 2004 with applicable simple interest as per O.T.S. matrix and guidelines of the Corporation.”

After the above, which is in type, the following (on which the entire case of the respondent is based) appears to have been added by hand –

“after release of spare factory land of 4000 sq. yds. as per settlement.”

12. A bare perusal of the letter dated July 3, 2002 as it was originally submitted to the Corporation and as it is contained in the Corporation's records, makes it clear that the respondent had acknowledged that after payment of the first installment the balance 75% of the OTS amount would be cleared off in eight quarterly installments upto July 2004 and the condition of release of the land was not there in the letter as it was originally submitted to the Corporation. The release of land is a later addition, is evident from the fact that the cut off date July 2004, for clearing off the entire OTS amount does not match with that condition.

13. In any event, in regard to the payment schedule, the respondent was bound by the terms of the OTS. Further, the terms of the OTS were independent of any condition that might have come from the respondent in course of negotiations preceding the OTS or any condition that the respondent might have put in its application for grant of OTS. The terms of the OTS would also not be controlled or altered by any decision taken in any regional industrial meeting chaired by the State's Industrial Commissioner. The terms of the OTS would continue to bind the respondent until those are duly changed and amended by the Corporation.

14. For the reasons, discussed above, we are satisfied that the respondent was not entitled to the relief claimed on its behalf and the writ petition filed in the High Court was liable to be dismissed. The order of the High Court is, accordingly, set aside and the writ petition filed on behalf of the respondent is dismissed. The appeal is allowed with costs amounting to Rs. 20,000/-.

.....J.
(Aftab Alam)

.....J.
(R.M. Lodha)

New Delhi;
September 8, 2011.