

In The High Court at Calcutta
Ordinary Original Civil Jurisdiction
[Commercial Division]
Original Side

Present: The Hon'ble Justice Aniruddha Roy

IA NO. GA-COM/2/2025

In CS-COM/63/2025

SENBO ENGINEERING LIMITED

VS

BANK OF MAHARASHTRA

For plaintiff:

Mr. Dhruva Ghosh, Sr. Adv.

Mr. Nilay Sengupta, Adv.

Mr. Altamash Alim, Adv.

Mr. Sujit Banerjee, Adv

Ms. Sunanda Samanta, Adv.

For defendant/bank:

Mr. Sourav Kr. Mukherjee, Adv.

Mr. Nirmalya Dasgupta, Adv.

Ms. Falguni Jana, Adv.

Ms. Sohana Pal, Adv.

Mr. Souhardya Mitra, Adv.

Reserved on : 19.11.2025

Judgment on : 03.12.2025

ANIRUDDHA ROY, J.:

In Re: IA NO. GA-COM/2/2025

Facts:

- 1.** This is an application filed by the defendant-bank, inter alia, praying for rejection of plaint and consequential dismissal of the suit.
- 2.** Prayers from the master summons are quoted below :

- (a) The plaint filed in the present suit, being CS-COM 63 of 2025 (Senbo Engineering Limited V/s Bank of Maharashtra) be rejected and taken off the file;*
 - (b) In the alternative, the present suit, being CS-COM 63 of 2025 (Senbo Engineering Limited V/s Bank of Maharashtra), be summarily be dismissed;*
 - (c) Stay of all further proceedings in the present action, being CS-COM 63 of 2025 (Senbo Engineering Limited V/s Bank of Maharashtra), till the disposal of the instant application;*
 - (d) Ad-interim order in terms of prayer (c)*
 - (e) Cost of the instant application to be borne by the plaintiff above named;*
 - (f) Such other order and/or orders as this Hon'ble Court may deem fit and proper.*
3. The plaint is annexed to the supporting affidavit at page 32 thereto. The summary of the plaint case is that from time to time the plaintiff has availed of advances and financial facilities/loans from the defendant-bank. The plaintiff defaulted. The account of the plaintiff was declared as Non-Performing Asset (in short **NPA**). On October 13, 2017 the defendant-bank had served a notice under sub-Section (2) to Section 13 of the **Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002** (for short **SARFAESI Act**). On December 14, 2018 the defendant-bank has served notice in respect of the security interests under sub-Section (4) to Section 13 of the Securitization Act. Plaintiff has not challenged such actions taken by the bank under Securitization Act. On March 5, 2019 the bank has filed an application under Section 19 of the **Debts Due to Banks and Financial Institutions Act, 1993** (for short **Debts Recovery Act**), which has been registered before the jurisdictional DRT as OA 183 of 2019. In 2020 the bank has initiated proceeding under Section 7 of the **Insolvency and Bankruptcy Code, 2016**

(for short **IBC**). At this juncture, a one-time settlement proposal (for short **OTS**) was submitted by the plaintiff. As the OTS proposal was submitted and was not considered by the bank, the said proceeding under Section 7 of IBC which was initiated in 2020 was withdrawn. The said first OTS proposal had failed as the bank did not agree. In or about March 2024, the bank has initiated the second proceeding under Section 7 of IBC, the same is still pending before NCLT. On December 27, 2024 **at page 141** to the supporting affidavit, the plaintiff has submitted its second OTS proposal. By a letter dated **January 21, 2025** at **page 148** to the supporting affidavit the bank has allegedly rejected the said second OTS proposal. Further plaintiff case is that, from time to time under the said first OTS proposal, though not fructified, plaintiff has made substantial payment. Similarly, under the said second OTS proposal from time to time negotiations took place and the plaintiff has made substantial payment to the bank, which was accepted by the bank. As per asking of the bank the plaintiff has also enhanced its offer and made further payment under the second OTS proposal. Further negotiation took place by and between the plaintiff and the bank, as would be evident from plaintiff's letter dated **February 5, 2025** at **page 151** to the supporting affidavit and the bank had rejected the OTS proposal by its letter dated **February 13, 2025** at **page 153** to the supporting affidavit.

4. In this conspectus of facts, the plaintiff contends that a concluded contract has been arrived at by and between the parties on account of one-time settlement of the dues of the bank and the bank cannot resile therefrom. Both the parties have acted upon such agreement between the parties. The plaintiff has altered its position upon being represented by the bank and

paid the bank substantially. The bank, now cannot reject the one-time settlement proposal proposed by the plaintiff.

5. In view of the above, the plaintiff has instituted the instant suit praying for the reliefs :-

“(a) A decree of declaration that the acceptance of consideration by the defendant bank against the enhanced offer of OTS proposed by the plaintiff has resulted into a concluded contract;

(b) A decree of specific performance of the contract in respect of the concluded contract between the plaintiff and the defendant thereby directing the defendant bank to accept the remainder amount of Rs.54 crores within 31st December, 2025 in lieu of full and final discharge of all the liabilities of the plaintiff company against the defendant bank;

(c) A decree of permanent injunction restraining the defendant bank from taking any coercive steps against the plaintiff company which frustrates the concluded contract of OTS between the plaintiff and the defendant;

(d) Decree for delivery up and cancellation of the Letters of the plaintiff dated 5th February 205 and 18th February 2025 and the defendant's letters dated 21st January 2025, 13th February 2025 & 19th February 2025;

(e) Receiver;

(f) Injunction;

(g) Judgment upon admission;

(h) Attachment before judgment;

(i) Costs;

(j) Any further reliefs or reliefs as this Hon'ble Court may deem fit and proper.”

6. The defendant has applied for rejection of the plaint.
7. Pursuant to the direction of the Court the parties to the instant application have filed and exchanged their affidavits.

Submissions :

8. Mr. Sourav Kr. Mukherjee, learned counsel being ably assisted by Mr. Nirmalya Dasgupta, learned counsel appearing for the defendant/applicant referring to the averments made in the plaint and the reliefs claimed therein,

at the outset, submits that the present suit is nothing but a ploy to resist the claims of the bank on account of default on the part of the plaintiff in respect of the financial assistance provided to it by the bank. The records would show that the OTS proposed by the plaintiff had not fructified.

9. Mr. Sourav Kr. Mukherjee, learned counsel further submits that, the prayers made in the plaint specifically **prayers (c) and (d)** are clearly in prohibition of the provisions made under Section 34 of the SARFAESI Act, 2002. Learned counsel further submits that the OTS proposal submitted by the plaintiff was not in terms of any Reserve Bank of India guidelines (for short RBI guidelines) neither in terms of any statutory scheme. Therefore, it is not incumbent or binding upon the bank to accept such OTS proposal, in the event, the bank authority thinks it fit not to be feasible or accepted by the bank. The OTS proposal submitted by the plaintiff was rejected by bank.
10. Mr. Sourav Kr. Mukherjee, learned counsel appearing for the defendant-bank submits that a defaulted borrower cannot claim OTS as a matter of right. An OTS cannot be enforced by way of filing a suit for specific performance. Inasmuch as the bank twice by its communications dated January 21, 2025 at page 148 and February 13, 2025 at page 153 to the supporting affidavit had rejected the OTS proposals of the plaintiff, as they were not acceptable to the authority. It is ultimately for the bank to take a conscious decision in its own interest and to secure/recover the outstanding debt. No bank can be compelled to accept a lesser amount under any OTS. The rejection of OTS proposal at the end of the bank was in its commercial wisdom. No borrower, as a matter of right, prays for grant of benefit of OTS.

In support, Mr. Sourav Kr. Mukherjee has relied upon the following decisions :

(a) *In the matter of: Bijnor Urban Cooperative Bank Limited Bijnor and Ors. Vs. Meenal Agarwal and Ors. reported at (2023) 2 SCC 805.*

(b) *In the matter of: State Bank of India Vs. Arvindra Electronics Private Limited reported at (2023) 1 SCC 540.*

11. Mr. Sourav Kr. Mukherjee appearing for the defendant-bank submits that in view of prayers made in the plaint, steps taken by the bank in exercise of power under Section 13 of the SARFAESI Act, 2002, have also become affected. He submits that there is a clear bar under Section 34 of the SARFAESI Act, 2002, to file such a suit. In support, he has relied upon a decision of the Hon'ble Supreme Court ***In the matter of: Authorised Officer, State Bank of India Vs. Allwyn Alloys Private Limited and Ors. reported at (2018) 8 SCC 120.***

12. Mr. Sourav Kr. Mukherjee further submits that the bank has also initiated proceeding under Section 7 of IBC which is pending before NCLT. Section 63 of IBC imposes a clear bar on the jurisdiction of civil court. In view of the reliefs claimed in the plaint, he submits that the insolvency proceeding initiated by the bank would also be affected. In view of the bar under Section 63 of IBC, the plaint filed in the instant suit should be rejected. Similarly, he submits that the proceeding initiated before the jurisdictional DRT for recovery of defaulted amount against the plaintiff borrower shall also be affected because of the reliefs claimed in the instant plaint. The instant suit

is also barred under Section 17 of the DRT Act, 1993. In view of the above, Mr. Sourav Kr. Mukherjee, submits that the plaint should be rejected.

13. Mr. Dhruba Ghosh, learned Senior Advocate appearing for the plaintiff has solely relied upon a judgment of the Hon'ble Supreme Court ***In the matter of: Bank of Rajasthan Limited Vs. VCK Shares and Stocks Broking Services Limited reported at (2023) 1 SCC 1*** and made his submissions to oppose the application filed by the defendant-bank.
14. Mr. Dhruba Ghosh, learned Senior Advocate appearing for the plaintiff submits that before the said judgment of the Hon'ble Supreme Court ***In the matter of: Bank of Rajasthan Limited (supra)*** was delivered, the borrower had the only remedy to raise its counter-claim against the claim of the bank before DRT if a proceeding is initiated by the bank under Section 19 of the DRT Act, 1993. Even though, there has been no provision for transfer of borrower's suit to the tribunal but suits filed by the borrowers over the country were transferred before the tribunal and were treated to be the counter-claim of the borrowers. After the said judgment ***In the matter of: Bank of Rajasthan Limited (supra)*** the law has changed to the effect that the borrowers can either file a counter-claim before DRT in a proceeding filed under Section 19 of the DRT Act, 1993 or maintain an independent civil suit before a jurisdictional civil court.
15. Mr. Dhruba Ghosh, learned Senior Advocate then refers to the plaint and relied upon various paragraphs therefrom and the reliefs claimed therein. He submits that DRT does not have any jurisdiction for passing a decree for declaration or for passing a decree for specific performance of any contract, as claimed by the plaintiff in the instant plaint. According to him on a plain

reading of the plaint it would be evident that, there had been a concluded contract between the parties with regard to one-time settlement of the alleged debts of the borrower-plaintiff but the bank resiled from it and hence, the plaintiff has claimed specific performance of contract, as the OTS has achieved the character of a concluded contract. If the plaint succeeds, then automatically the defendant bank would have to be obliged to accept payment from the plaintiff under the said OTS and the alleged debts of the plaintiff would be settled once for all. Therefore, the instant suit is maintainable. The plaintiff may succeed, may lose the suit, at the trial but the plaint has to travel through the stage of trial.

16. On facts, Mr. Dhruba Ghosh, learned Senior Advocate submits that the first OTS could not be made through. However, the second OTS proposal submitted by the plaintiff was acted upon and accepted by the bank, as the bank has accepted payments from time to time thereunder from the plaintiff. As per demand of the bank, the plaintiff has enhanced its offer and paid the amount on such enhanced offer and the bank has accepted the same. He submits that a concluded contract had arrived at by and between the parties on account of OTS and since the bank has resiled therefrom, the instant suit has been filed praying for specific performance of the concluded contract with consequential reliefs.

17. On this scope of IBC Mr. Dhruba Ghosh, learned Senior Advocate submits that the jurisdiction of NCLT, while adjudicating an insolvency proceeding under IBC, is very limited only to the extent to ascertain whether any default is there. If the default is established then the further process for insolvency proceeds according to the provisions laid down under IBC. Insolvency

proceeding is not a debt collecting proceeding. In support, he has relied upon a decision of the Hon'ble Supreme Court ***In the matter of: ES Krishnamurthy and Ors. Vs. Bharath Hi-Tecch Builders Private Limited reported at (2022) 3 SCC 161.***

18. Referring the reliefs claimed in the plaint Mr. Dhruba Ghosh, learned Senior Advocate submits that the plaintiff has not challenged the steps taken by the bank under the SARFAESI Act neither the steps taken under IBC. In fact, the proceeding for recovery of debt initiated by the bank under Section 19 of the DRT Act is also pending and is being proceeded with. The plaintiff has also not challenged initiation of the said debt recovery proceeding pending before the DRT. Therefore, the plaint is neither barred under Section 34 of the SARFAESI Act nor under Section 63 of the IBC or under any provisions of the DRT Act.
19. Accordingly, Mr. Dhruba Ghosh, learned Senior Advocate appearing for the plaintiff submits that the application filed by the defendant praying for rejection of the plaint is misconceived, not tenable in law and should be dismissed. The plaint must stand for trial.

Decision:

20. After considering the rival submissions of the parties and on perusal of the materials on record, this Court at the outset reiterates the law prevails on rejection of plaint. To adjudicate an application praying for rejection of plaint, it is the only duty cast upon the Court to read the plaint as it is, by taking the statements made therein as true, correct and sacrosanct including the reliefs claimed therein. If on a meaningful and plain reading of the plaint, the Court finds without holding any detail fact-finding enquiry on

it, that the plaint is barred by law and no triable issue is required to be seen, the Court is empowered to reject the plaint summarily at any stage of the proceeding.

21. On a plain and meaningful reading of the instant plaint together with the reliefs claimed therein, it appears to this Court that, the plaint case is that the borrower plaintiff is admittedly a defaulter. On harmonious reading of the provisions under **Rule 11 to Order VII of Code of Civil Procedure, 1908 (for short CPC)** this Court is also of the firm and considered view that even if a particular point of law is not raised by the defendant in an application for rejection of the plaint, if the civil court on a plain reading of the plaint comes to a finding that the suit is barred by law, the power, authority and jurisdiction of the Court is plenary to reject the plaint without even the point being taken by the defendant. Similarly, in case of an undefended suit, the Court can summarily reject the plaint, if on a plain reading of the plaint, the Court is of the view that the suit is barred by law.
22. The borrower plaintiff proposed one-time settlement twice. The first one had failed. Insofar as the second one is concerned, mutual discussions and negotiations took place by and between the plaintiff and the defendant bank from time to time. Pursuant to such negotiations and discussions, the plaintiff has raised its offer according to the demand of the bank. Amounts paid by the plaintiff from time to time which were accepted by the defendant bank including the amount under the enhanced offer, as was enhanced pursuant to demand of the bank. Even then, the bank has allegedly resiled from its promise and rejected the OTS, as the same was not acceptable to its authority. In the conspectus of these facts the borrower plaintiff has filed

the instant suit praying for specific performance of an alleged concluded contract with regard to OTS along with other consequential reliefs.

- 23.** The instant plaint with its reliefs, as it is framed, may not offend the steps taken by the bank under the SARFAESI Act or IBC or the proceeding pending under Section 19 of the DRT Act. However, on a plain and meaningful reading of the plaint, this Court proceeds to examine whether the plaintiff has a right to enforce an alleged contract of OTS in law.
- 24.** Admittedly, plaintiff is a defaulter borrower. By virtue of furnishing OTS proposal the plaintiff intends to settle its defaulted account at a lesser sum. Had this proposal been accepted by the bank. Conclusively and without any rejection, the plaintiff could have paid it and could become debt free. In the facts of the instant case, twice the OTS proposals had been rejected by the bank and last of such rejection was on **February 13, 2025 at page 153** to the supporting affidavit, as the proposal was not acceptable to the bank authority. The rejection clearly shows a conscious decision of the bank while rejecting the OTS. It is ultimately for the bank to take a conscious decision in its own interest and to secure/recover the outstanding debt. No bank can be compelled to accept lesser amount under any OTS proposal. When the loan is disbursed by the bank and the borrower defaulted, the outstanding amount due and payable to the bank, it will always take a conscious decision in the interest of the bank and in its commercial wisdom. In absence of any RBI scheme and/or any other statutory scheme, the OTS is an arrangement between the bank and its defaulter borrower without any statutory flavour, as in the instant case. Without the statutory flavour an OTS is a policy decision of the bank in its commercial wisdom. No defaulted

borrower can, as a matter of right, prays for grant of benefit of such one-time settlement. It is pertinent to note that in the facts of the instant case, plaintiff submitted its offer for OTS not under any statutory scheme but on its own pursuant to the discussions and negotiations held with the bank, as the plaint case is. Therefore, no right has been created in favour of the plaintiff to enforce the said OTS by way of specific performance or otherwise.

- 25.** If the plaintiff cannot claim any right to enforce the said OTS, the claim for specific performance is not maintainable. Inasmuch as, the relief for specific performance is equitable in nature. Hon'ble Supreme Court ***In the matter of: Bijnor Urban Co-operative Bank Limited (supra)*** had observed as under :

“11. While passing the impugned judgment and order, the High Court, in response to the submissions on behalf of the Bank that, there are all possibilities of recovery of the loan amount and the efforts are being made to recover the amount by initiating proceedings under the SARFAESI Act and that the properties mortgaged can be auctioned, has observed that the proceedings under the SARFAESI Act have remained pending for seven years and the Bank has been unable to recover its dues and therefore the hope of recovery is illusory. This conclusion is not supported by any material on record. Merely because the proceedings under the SARFAESI Act have remained pending for seven years, the Bank cannot be held responsible for the same. No fault of the bank can be found. What is required to be considered is a conscious decision by the Bank that the Bank will be able to recover the entire loan amount by auctioning the mortgaged property and a due application of mind by the Bank that there are all possibilities to recover the entire loan amount, instead of granting the benefit under the OTS Scheme and to recover a lesser amount. It is ultimately for the Bank to take a conscious decision in its own interest and to secure/recover the outstanding debt. No bank can be compelled to accept a lesser amount under the OTS Scheme despite the fact that the Bank is able to recover the entire loan amount by auctioning the secured property/mortgaged property. When the loan is disbursed by the bank and the outstanding amount is due and payable to the bank, it will always take a conscious decision in the interest of the bank and in its commercial wisdom.

12. *Even otherwise, as observed hereinabove, no borrower can, as a matter of right, pray for grant of benefit of One Time Settlement Scheme. In a given case, it may happen that a person would borrow a huge amount, for example Rs. 100 crores. After availing the loan, he may deliberately not pay any amount towards installments, though able to make the payment. He would wait for the OTS Scheme and then pray for grant of benefit under the OTS Scheme under which, always a lesser amount than the amount due and payable under the loan account will have to be paid. This, despite there being all possibility for recovery of the entire loan amount which can be realised by selling the mortgaged/secured properties. If it is held that the borrower can still, as a matter of right, pray for benefit under the OTS Scheme, in that case, it would be giving a premium to a dishonest borrower, who, despite the fact that he is able to make the payment and the fact that the bank is able to recover the entire loan amount even by selling the mortgaged/secured properties, either from the borrower and/or guarantor. This is because under the OTS Scheme a debtor has to pay a lesser amount than the actual amount due and payable under the loan account. Such cannot be the intention of the bank while offering OTS Scheme and that cannot be purpose of the Scheme which may encourage such a dishonesty.*

13. *If a prayer is entertained on the part of the defaulting unit/person to compel or direct the financial corporation/bank to enter into a one-time settlement on the terms proposed by it/him, then every defaulting unit/person which/who is capable of paying its/his dues as per the terms of the agreement entered into by it/him would like to get one time settlement in its/his favour. Who would not like to get his liability reduced and pay lesser amount than the amount he/she is liable to pay under the loan account? In the present case, it is noted that the original writ petitioner and her husband are making the payments regularly in two other loan accounts and those accounts are regularised. Meaning thereby, they have the capacity to make the payment even with respect to the present loan account and despite the said fact, not a single amount/installment has been paid in the present loan account for which original petitioner is praying for the benefit under the OTS Scheme.*

14. *The sum and substance of the aforesaid discussion would be that no writ of mandamus can be issued by the High Court in exercise of powers under Article 226 of the Constitution of India, directing a financial institution/bank to positively grant the benefit of OTS to a borrower. The grant of benefit under the OTS is always subject to the eligibility criteria mentioned under the OTS Scheme and the guidelines issued from time to time. If the bank/financial institution is of the opinion that the loanee has the capacity to make the payment and/or that the bank/financial*

institution is able to recover the entire loan amount even by auctioning the mortgaged property/secured property, either from the loanee and/or guarantor, the bank would be justified in refusing to grant the benefit under the OTS Scheme. Ultimately, such a decision should be left to the commercial wisdom of the bank whose amount is involved and it is always to be presumed that the financial institution/bank shall take a prudent decision whether to grant the benefit or not under the OTS Scheme, having regard to the public interest involved and having regard to the factors which are narrated hereinabove.

15. In view of the aforesaid discussion and for the reasons stated above, we are of the firm opinion that the High Court, in the present case, has materially erred and has exceeded in its jurisdiction in issuing a writ of mandamus in exercise of its powers under Article 226 of the Constitution of India by directing the appellant-Bank to positively consider/grant the benefit of OTS to the original writ petitioner. The impugned judgment and order passed by the High Court is hence unsustainable and deserves to be quashed and set aside and is accordingly quashed and set aside.

16. The present appeal is accordingly allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.”

26. The reliefs claimed in the plaint ***In the matter of: Bank of Rajasthan***

Limited (supra) is quoted as under :

“5. A crucial development took place on 18.03.1998 when the appellant sold the pledged shares of BFL Software Ltd. for a total sum of Rs.5,77,68,000/- to adjust the amounts against the dues in view of the authorisation available with them as a part of the loan transaction. The respondent, as a sequitur, filed Civil Suit no.129 of 1999 before the High Court of Calcutta on 09.03.1999 praying, inter alia, for the following reliefs:

i) A declaration that the sale of shares of BFL Software Ltd. was void;

ii) a decree for return of pledged shares in respect of overdraft facility account, and in default to pay Rs.48.95 crores; and

iii) a declaration that no sum was payable by the Respondent to the Appellant in respect of the term loan dated 27.07.1994 and Overdraft Account dated 19.09.1995 and that the Appellant bank was not entitled to a decree for a sum of Rs.8,62,41,973.36 from the Respondent.”

27. From the above, it would be evident that, the reliefs claimed in the instant plaint and the reliefs claimed ***In the matter of: Bank of Rajasthan Limited (supra)*** plaint are totally different by their nature and character. From the reliefs claimed in the plaint ***In the matter of: Bank of Rajasthan Limited (supra)*** it is clear that, there was a clear right to sue in favour of the plaintiff and the plaint was not barred by law otherwise. Whereas on a plain reading of the instant plaint and reliefs claimed therein, it is clearly evident that the reliefs claimed in the instant plaint are barred by law, as the plaintiff cannot enforce an OTS, as already discussed above. Therefore, the instant plaint, as framed in its present form, is clearly barred by law.
28. Therefore, even if, there is no jurisdictional bar to maintain a civil suit before a jurisdictional civil court but if on a plain and meaningful reading of the plaint, it appears to Court that, the plaint as it is framed in its existing form is otherwise barred by law, the same should be and liable to be rejected under the provisions of Rule 11 to Order VII of Code of Civil Procedure.
29. In view of the forgoing reasons and discussions, the plaint filed in the instant commercial suit being **CS-COM/63/2025** stands **rejected** and is directed to be **taken off** the file.
30. The suit register shall be rectified accordingly by the department.
31. Accordingly, the instant application being **IA NO. GA-COM/2/2025** stands **disposed of** without any order as to cost.

(Aniruddha Roy, J.)