IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1052 of 2015

Date of decision:9.4.2015

Navinder Sharma ….Petitioner

VERSUS

State Bank of India and others .....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE LISA GILL

Present: Ms. Jyoti Sareen, Advocate for the petitioner.

Mr. Rakesh Gupta, Advocate for respondents.
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HEMANT GUPTA, J.(Oral)

The petitioner is a guarantor having mortgaged property i.e. Office No.404, 3rd Floor, Building No.39, Alpha Estate Building, G.T. Road, Jalandhar, as part of the security of the loan advanced to M/s HRA Paper Mills Pvt. Ltd. (hereinafter referred to as 'the borrower').

The borrower had taken financial assistance to the tune of over Rs.24 crores and on account of the default committed by the borrower, a notice under Section 13(2) of the Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (for short 'the Act') was issued on 24.07.2013. The petitioner also submitted his reply to the said show cause notice asserting that the petitioner has a limited liability.

Thereafter, the borrower entered into one time settlement with respondent-Bank on 18.02.2014. The Directors of the borrower offered to pay the amount under settlement after selling the factory, land and building and after depositing the selling price of the mortgaged properties in the said settlement. As per clause 4 of the settlement, title deeds of the properties were to be released only after receipt of agreed selling price of each of the property as mentioned in the settlement letter. The value of the property of the petitioner was mentioned as Rs.65 lakhs before the same can be released by Bank. The petitioner asserts that he has deposited Rs.5 lakhs on 10.11.2014 through Real Time Gross Settlement (for short 'RTGS') into the loan account of the borrower and further offered to deposit Rs.5 lakhs immediately after receiving consent from the respondents so as to pay the total amount of Rs.65 lakhs and also offered to pay balance Rs.55 lakhs within a period of one month. Subsequently, the petitioner paid a sum of Rs.5 lakhs on 23.02.2015 and another sum of Rs.5 lakhs on 24.02.2015.

Since the entire settlement amount was not deposited, the District Magistrate took cognizance of the proceedings under Section 14 of the Act and directed the Tehsildar to take possession of the assets mentioned in the application including the property of the petitioner. It is, thereafter, the petitioner has invoked the writ jurisdiction of this Court.

When the writ petition came up for hearing before this Court on 26.03.2015, this Court passed the following order:-

> "On 18.02.2014 (Annexure P-3), the property mortgaged by the petitioner was offered for release on payment of Rs.65 lakhs, though the realizable value was said to be Rs.62 lakhs. The stand of the Bank is that the said amount is part of one-time settlement of all the loan accounts of the borrower, therefore, property of the petitioner cannot be released in isolation on payment of Rs.65

> lakhs. The Bank can consider releasing the same at the market value of Rs.77 lakh as per Annexure P-3 itself.
>
> We have heard arguments at some length and find that the stand of the Bank that the property can be released only on payment of Rs.77 lakh is, prima facie, not justifiable.
>
> The Bank is categorical that Rs.65 lakh is the amount to be paid for releasing the security. Therefore, if the petitioner is ready and willing to deposit Rs.65 lakh, the Bank cannot turn around to deny the release of the property.
>
> At this stage, Mr. Gupta seeks some time to reconsider the matter.
>
> List on 09.04.2015."

The stand of the petitioner is that the respondent-Bank cannot ask for more amount than what was the realizable value mentioned in the settlement dated 18.02.2014 and that the petitioner is ready to pay the said amount to seek the release of his property.

Mr. Gupta, learned counsel for the respondent-Bank, denied the assertion of the petitioner and argued that the Bank is entitled to the market value of the property.

We have heard learned counsel for the parties and find no merit in the stand of the respondent-Bank.

As per settlement dated 18.02.2014, the Bank has offered to release the said property on receipt of Rs.65 lakhs, though realizable value was said to be Rs.62 lakhs. The stand that such realizable value was part of the one time settlement of all the loan accounts of the borrower is not tenable as the property of the petitioner was agreed to be released on payment of Rs.65 lakhs against the realizable value of Rs.62 lakhs in the settlement dated 18.02.2014. The market value of Rs.77 lakhs is not relevant when the Bank has pegged the price to release the property on receipt of Rs.65 lakhs.

Admittedly, the petitioner has paid Rs.10 lakhs within a sum of Rs.65 lakhs. The payment of Rs.5 lakhs on 10.11.2014 is said to be on behalf of the borrower and Mr. Gupta states that it has been accounted for while releasing one of the properties of the borrower.

Learned counsel for the petitioner has undertaken to pay Rs.55 lakhs within one month and on deposit of Rs.55 lakhs, the property of the petitioner shall be released and the title deeds returned to the petitioner forthwith.

The present writ petition is disposed of accordingly.

(HEMANT GUPTA)
JUDGE

APRIL 9, 2015
'D. Gulati'

(LISA GILL)
JUDGE