IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6079 of 2015(O&M)

Date of decision:23.4.2015

M/s Gupta Traders and others ….Petitioners

VERSUS

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

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Aalok Jagga, Advocate and
Mr. Karanyog Singh Riar, Advocate
for the petitioners.

Mr. S.C. Pathela, Advocate
for caveator-respondents No.1, 2 and 5.

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HEMANT GUPTA, J.(Oral)

The petitioners have approached this Court to claim a writ of mandamus for directing the respondent-Bank to release the properties mortgaged in the loan account of petitioner No.1 i.e. M/s Gupta Traders in view of the fact that the entire amount of loan stands paid which is evident from the letter dated 11.03.2015 (Annexure P-8).

It is averred that petitioner No.1 has taken a term loan of Rs.54 lakhs and Rs.40 lakhs as a cash credit limit in September, 2009 and mortgaged the following three properties:-

i) Factory, land and building measuring 600 square yards comprising in Khewat No.332/456 situated at Patti choudhary, Opposite Grain Market, Kaithal in the name of petitioner No.1.

ii) Plot measuring 10 marlas, 242 square yards comprising in Khewat No.324, khasra no.24/17 (8-0) situated at Kalyan Nagar, Doora Khera, Thanesar in the name of petitioner No.2.

iii) Land & Building measuring 5 bighas 15 biswas comprising in Khata No.43/85, khasra no.162 (3-3), 164 min (1-0), 165 (2-11), 166 min (5-5), Khatauni No.86, Khasra No.712/640/164 (1-8), 164 (2-15), 166 min (1-0), 167(5-8) situated at Ramgarh, Tehsil Nabha, District Patiala (Punjab) in the name of petitioners No.3 and 4.

The loan account of petitioner No.1 was declared a Non Performing Asset on 31.03.2014. Thereafter, 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 30.04.2014. The symbolic possession of the abovementioned three properties was taken on 06.08.2014. Thereafter, petitioner No.1 entered into one time settlement on 31.10.2014 to a pay a sum of Rs.48 lakhs and deposited the same on the said date. Thereafter, physical possession of the properties had been taken on 16.02.2015, even though the entire loan account of the petitioner stands satisfied.

In the written statement, the stand of the respondents is that the respondent-Bank has filed an Original Application No.85 of 2015 under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, against M/s Gupta Rice Mills wherein in IA No.231 of 2015 the Debts Recovery Tribunal (for short 'the Tribunal') has passed an order of attachment of properties No.1 and 2. It is explained that in fact property No.1 is owned by a partnership firm of which Smt. Riva Garg is a partner to the extent of 50% and she is the guarantor in the loan availed by M/s Gupta Rice Mills, the respondent in the Original Application, whereas the property No.2 is owned by Smt. Riva Garg.

We have heard learned counsel for the parties and find that the act of taking physical possession of the properties mortgaged for availing loan by petitioner No.1 on the strength of attachment order passed by the Tribunal in another case i.e. M/s Gupta Rice Mills is wholly mis-conceived and abuse of process of law. The three properties were mortgaged when M/s Gupta Traders has taken a loan of Rs.94 lakhs. Admittedly, the said loan stands settled with payment of Rs.48 lakhs on 31.10.2014 but having paid the loan amount, still, physical possession was taken by the Bank on 16.02.2015 for the reason that the partnership firm of which Smt. Riva Garg is a partner is a defaulter.

Admittedly, in proceedings under Section 13(2) of the Act initiated against M/s Gupta Rice Mills, the properties mortgaged by the petitioners have not been included. Therefore, without initiating proceedings under the Act, the respondents could not take possession of the properties on the strength of an attachment order passed by the Tribunal under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The attachment of the properties puts an embargo on the propriety interest of the owner but does not give any right to the Bank to take physical possession of the property.

Therefore, we find that the action of the respondent-Bank to take physical possession of the properties after repayment of the entire loan amount suffers from serious illegalities.

Consequently, we allow the present writ petition and direct the respondents to pay a sum of Rs.15,000/- per month from 16.02.2015 as damages for retaining the possession of the property.

The respondent-Bank is directed to hand over physical possession of the properties on or before 2 o' clock on 25.04.2015.

The writ petition stands disposed of accordingly.

(HEMANT GUPTA)
JUDGE

APRIL 23, 2015
'D. Gulati'

(LISA GILL)
JUDGE