IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.10180 of 2018.
Date of Decision: April 25, 2018

Manprit Singh and another ......Petitioners

versus

Corporation Bank and others .....Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT.**
**HON'BLE MR.JUSTICE SHEKHER DHAWAN.**

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Present: Mr.Pavan Malik, Advocate, for the petitioners.
Mr.Anandeshwar Gautam, Advocate, for
Mr.Gaurav Goel, Advocate, for respondent Nos.1 & 2.

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**Surya Kant, J**. (Oral)

Notice of motion to respondent Nos.1& 2 only at this stage.

On our asking, Mr.Anandeshwar Gautam, Advocate, for Mr.Gaurav Goel, Advocate, accepts notice on their behalf.

Let two copies of the writ petition be handed-over to him during the course of day failing which this order shall be automatically recalled and the writ petition shall be deemed to have been dismissed for non-prosecution.

Having regard to the nature of order which we propose to pass, it is not necessary to seek any counter-reply from respondent Nos.1 & 2 or to serve respondent No.3 at this stage as no order prejudicial to their interest is being passed on merits.

The petitioners are son and mother respectively. While 1st petitioner is the borrower, his mother (petitioner No.2) and his father are the guarantors. The Cash Credit Limit facilities availed by 1st petitioner from the respondent-bank is of Rs.10.00 lacs. It appears that the due amount could not be deposited hence the account of the 1st petitioner was classified as NPA and the respondent-bank took measures under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. At the same time, the 1st petitioner was directed to pay the overdue amount of Rs.2,38,459/- within seven days. Thereafter, the matter was taken up in the Lok Adalat for amicable settlement. However, no compromise could took place and the respondent-bank issued a notice under Section 13(4) of 2002 Act. The petitioners filed SA under Section 17 of 2002 Act on 03.12.2013. They also deposited a sum of Rs.1.00 lac as per the interim order passed by the learned Tribunal. Their SA was however, dismissed in default by the Tribunal on 24.09.2015. They applied for its restoration on 12.10.2015 on the ground that the date was wrongly noted. The said application was adjourned from time to time after notice and vide the impugned order dated 28.03.2018, the Tribunal has dismissed the application for restoration. Soon thereafter, the respondent-bank has issued the sale notice dated 06.04.2018 prompting the petitiones to approach this Court.

As per the impugned notice, the outstanding recoverable amount is Rs.10,75,234/- which is disputed by learned counsel for the petitioners. Be that as it may, he submits that the petitioners to show their *bonafide* are ready to deposit Rs.5.00 lacs within three days.

Having heard learned counsel for the parties, we are satisfied that non-appearance of the petitioners before the Tribunal on the date when their SA was dismissed in default, was *bonafide* and for the reasons beyond their control. It was an inadvertent error in noting the wrong date due to which their counsel could not appear. The Tribunal ought to have accepted the prayer of the petitioners for restoration of SA for its adjudication on merits. We are satisfied that the impugned order dated 28.03.2018 cannot sustain and deserves to be set-aside. Ordered accordingly.

The SA No.391 of 2013 filed by the petitioners is restored to its original number and file with a direction to the Tribunal to decide the same on merits and in accordance with law.

The sale of secured assets however shall remain stayed till the decision of SA subject to the petitioners' depositing a sum of Rs.5.00 lacs within three days.

The parties are directed to appear before the Tribunal on 07.05.2018.

The writ petition stands disposed of.

**[SURYA KANT]**
**JUDGE**

April 25, 2018
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**[SHEKHER DHAWAN]**
**JUDGE**

**Whether speaking/reasoned : Yes/No**
**Whether Reportable : Yes/No**