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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No. 12033 of 2018
Decided on 05.09.2018**

M/s Mohinder Ashok Agro Industries, Ambala

Petitioner

Versus

Authorised Officer, State Bank of India, Panchkula and others

Respondents

* * *

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL, JUDGE
HON'BLE MR. JUSTICE AVNEESH JHINGAN, JUDGE**

Present : Mr. Viney Saini, Advocate
for the petitioner.

Mr. Tikesh Kumar, Advocate
for respondents No.1 and 2.

Ms. Harmanpreet Kaur, Advocate
for respondent No.5.

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AVNEESH JHINGAN, J.

The present writ petition has been filed seeking quashing of order dated 12.02.2018 (Annexure P-1) published in newspaper for taking over of possession of the mortgaged property.

2. The petitioner is a partnership firm in the name of M/s Mohinder Ashok Agro Industries and the present writ petition has been filed through its partner Sh. Ritesh Kumar. Authorised Officer of State Bank of India, Panchkula; Branch Manager, State Bank of India, Ambala City; District Magistrate, Ambala City; Tehsildar-cum-Duty Magistrate, Ambala City and Rohit Kumar, partner of the petitioner-

firm have been arrayed as respondents No.1 to 5 respectively in the writ petition.

3. The petitioner-firm availed a cash credit limit of ₹30 lakhs and term loans of ₹66 lakhs and ₹60 lakhs for business purposes from respondent-bank.

4. Both the term loans were to be repaid in 84 equal monthly installments. In order to secure the credit facilities availed, the petitioner mortgaged land measuring 15 kanals 16 marlas comprising in Khewat No. 144//139, Khatoni No. 159, Khasra No. 51//12, 51//19, Khewat No. 341//331, Khatoni No. 394, Khasra No. 51//11/2 in village Sullar, H.B. No. 174 situated at Tehsil & District Ambala.

5. There arose a dispute between the partners as a result Civil Suit was filed. There was default in repayment of loans. The account was declared as Non-Performing Asset (NPA) on 01.04.2016. A notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Act') was issued on 28.04.2016. As per the notice, an amount of ₹1,37,79,360/- alongwith future interest was due. Thereafter, notice under Section 13(4) of the Act was issued on 30.06.2016. The respondent-bank moved an application under Section 14 of the Act and respondent No.3 passed an order dated 18.01.2018 for providing police help to take over possession of the mortgaged property. A notice for taking over physical possession of the mortgaged property was published on 12.02.2018, being aggrieved, the present writ petition has been filed.

6. Notice of motion was issued on 14.05.2018 and *status quo*

regarding physical possession was ordered to be maintained subject to petitioner's depositing ₹10 lakhs. It was ordered that respondent-bank shall accept the same without prejudice to its rights in the writ petition.

7. The petitioner failed to deposit ₹10 lakhs as per direction in order dated 10.08.2018.

8. Learned counsel for the petitioner contended that the petitioner-firm has reputation in the market and it understands its responsibility and is ready to repay the defaulted amount. It was further argued that the respondent No.5 (other partner of the firm) is not making any payment and for this reason, the default is continuing.

8. The contentions raised by learned counsel for the petitioner cannot be accepted. The account was declared as NPA on 01.04.2016. An amount of more than ₹1,37,79,360/- was due as on 28.04.2016. After the account being classified as NPA, no substantial amount has been deposited by the petitioner for clearing the outstanding dues. Only an amount of ₹5 lakhs under the orders of this Court was deposited, to avail an interim protection. The order dated 10.08.2018 directing to deposit ₹10 lakhs was scorned.

9. The argument raised was that only one partner of the firm is depositing money and the other partner i.e. respondent No.5, has not deposited any amount deserves rejection. The said issue cannot be a ground for non-clearance of the dues of the respondent-bank. Moreover, the argument raised is against Section 25 of Indian Partnership Act, 1932.

10. For reference, Section 25 of the Indian Partnership Act,

1932 is reproduced below :-

> "***25. Liability of a partner for acts of the firm***— *Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner."*

11. As per Section 25 of the Indian Partnership Act, 1932, every partner is jointly and severally liable for the acts of the firm. The petitioner is liable to clear the liability of the firm. The right of the bank while making recovery is not affected by the individual share percentage of each partner in the firm, it is something *inter se* the partners.

12. The Apex Court in ***Ashutosh Vs. State of Rajasthan and others, 2005 AIR (SC) 3434*** held as follows:-

> *"Under Section 25, the liability of the partners is joint and several. It is open to a creditor of the firm to recover the debt from any one or more of the partners. Each partner shall be liable as if the debt of the firm has been incurred on his personal liability."*

13. The Supreme Court in ***Sahu Rajeshwar Nath Vs. Income Tax Officer, C-Ward, Meerut and others (1969) 72 ITR 617*** held as under :-

> *"Under the Partnership Act the liability of the partners of a firm is joint and several and it is open to a creditor of the firm to recover the debt of the firm from any one or more of the partners."*

14. Public money cannot be stalled on the ground of alleged Civil Suit pending between the partners. Mere bald statement is being made that the petitioner intends to clear the outstanding dues. The statement made is not backed by any concrete efforts. For more than

2 years, no substantial payment has been made to the respondent-bank. The entire endeavour of the petitioner is to delay the inevitable i.e. taking over possession of the mortgaged property. The petition filed lacks *bona fide*.

15. No case is made out for interference in exercise of the writ jurisdiction by this Court under Article 226 of the Constitution of India.

16. The writ petition is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

September 05, 2018
pankaj baweja

Whether speaking/reasoned: Yes / No

Whether reportable : Yes / No