201 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 13346 of 2018
DECIDED ON: OCTOBER 22, 2018

M/S LADDI DAIRY AND OTHERS

.....PETITIONERS

VERSUS

DISTRICT MAGISTRATE, GURDASPUR AND ANOTHER

.....RESPONDENTS

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

Present : Mr. Nakul Sharma, Advocate and
Ms. Jaspreet Kaur, Advocate
for the petitioners.

Mr. KPS Dhillon, Advocate
for the respondents

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AVNEESH JHINGAN, J

The present writ petition has been filed seeking quashing of the proceedings initiated under Sections 13 and 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Act').

2. Petitioner No.1 is a proprietorship concern; petitioner No.2 is the proprietor; petitioner No.3 is a co-borrower and petitioners No.4 to 6 are guarantors of the loan facilities availed.

3. The District Magistrate, Gurdaspur, District Gurdaspur; UCO Bank, having its head office at 10-BTM Sarani, Kolkata and having one of its branch at G.T. Road Batala, District Gurdaspur through its Chief Manager, have been arrayed as respondents No.1 and 2 respectively, in this writ petition.

3. Petitioner No.1 availed a cash credit facility of ₹5,00,000/- and a term loan of ₹4,90,000/- from the respondent-Bank. Petitioners No.2 and 3 also availed a term loan of ₹8,00,000/-, which was to be repaid in 120 Equal Monthly Installments (EMIs) of ₹10,683/- each. Petitioners No.2 and 3 availed another term loan of ₹10,00,000/-, which was to be repaid in 180 Equal Monthly Installments (EMIs) of ₹10,869/- each. In order to secure the credit facilities availed, petitioners mortgaged the following property:

> ***"Commercial-cum-Residential building 805 sq. ft or say 3 marla under khasra No. 3R/19/1/1/10-3, situated at Faizpura Dera Baba Nanak Road Batala, Hadbast No. 213, Tehsil Batala, District Gurdaspur, in the name of of S. Bhupinder Singh s/o later S. Jagir Singh, Smt. Sukhwinder Kaur w/o S. Bhupinder Singh, S. Gagandeep Singh s/o S. Sukhwinder Singh, S. Lovejeet Singh s/o S. Sukhwinder Singh & Smt. Ramandeep Kaur w/o S. Sukhwinder Singh"***

4. The petitioners failed to maintain the financial discipline, consequently, respondent No.2-Bank issued notices dated 18.03.2016 under Section 13(2) of the Act. As per notices, there was an outstanding amount of

₹22,92,171/- against the loan availed by petitioner No.1. As per another notice dated 27.10.2016 issued by respondent No.2 under Section 13(2) of the Act, there was an outstanding amount of ₹15,04,144/- in respect of two term loan accounts availed by petitioners No.2 and 3. Thereafter, a notice dated 11.01.2017 under Section 13(4) of the Act was issued.

5. The respondent No.2 filed an application under Section 14 of the Act. Vide order dated 31.08.2017, respondent No.1 allowed the aforesaid application and ordered that police help be provided to the Bank for getting possession of the mortgaged property. Aggrieved of the recovery proceedings, present petition has been filed.

6. On 24.05.2018, learned counsel for the petitioners contended that the Bank has also filed a suit before the Debt Recovery Tribunal for recovery of sum of ₹41,00,000/- approximately. Notice of motion was issued. In the meanwhile, it was ordered that the petitioners be allowed to submit their proposal for One Time Settlement (OTS) to the respondent-Bank alongwith an upfront amount of ₹5,00,000/- within two weeks from that day and the Bank was to consider their proposal as per its policy and convey its decision to them. *Status-quo* regarding physical possession of the secured asset was also ordered to be maintained.

7. Heard learned counsel for the parties.

8. Learned counsel for the petitioners submitted that the petitioners have already deposited a sum of ₹5,00,000/- in terms of order dated 24.05.2018. He further submitted that the petitioners are ready and willing to settle the credit facilities availed.

9. Learned counsel for respondent No.2-Bank argued that though an amount of ₹5,00,000/- has been deposited by the petitioners but no proposal for 'OTS' has been submitted by them.

10. Without expressing any opinion on the merits of the case and in view of the facts of the case, instant petition is disposed of with the following directions:

(i) Petitioners shall approach respondent No.2-Bank within one month from today with a proposal of 'OTS'. Alongwith the proposal, petitioners shall deposit another sum of ₹5,00,000/-.

(ii) Respondent No.2-Bank on receipt of proposal shall decide the same in accordance with law, after affording an opportunity of hearing to the petitioners by passing a speaking order. The decision on the proposal shall be taken at the earliest but not later than one month from the receipt of proposal;

(iii) It is clarified that in case, the petitioners fail either to submit their proposal within time specified or to deposit an amount of ₹5,00,000/- along- with the proposal, respondent No.2-Bank would be at liberty to proceed in accordance with law;

(iv) At the time of issuance of notice of motion, *status-quo* regarding physical possession of the secured asset was ordered to be maintained. The said interim protection shall continue till the decision is taken by respondent No.2-Bank on the proposal submitted by the petitioners;

(v) However, it is clarified that extension of interim protection shall not be construed as an expression of opinion on the merits of the case by this Court.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

OCTOBER 22, 2018
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Whether speaking/reasoned: Yes / No
Whether reportable : Yes / No