IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14656 of 2018
Decided on : 10.12.2018

Lakhwinder Singh ...... Petitioner

Versus

HDFC Bank and anr. ...... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sanjeev Kumar, Advocate for
Mr. Munish Puri, Advocate
for the petitioner.

Mr. Shekhar Verma, Advocate
for the respondents.

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Manjari Nehru Kaul, J.

The instant petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing the impugned notices issued under Sections 13(2) (Annexure P-2) and 13(4) (Annexure P-3) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') and for setting aside the order dated 15.03.2018 (Annexure P-4) passed by Debt Recovery Tribunal, Chandigarh.

2. The petitioner availed non-residential premise equity loan of ₹ 22,00,000/- from the respondent-bank in the year 2006. The said loan was sanctioned against the following properties:

> *"Plot/land measuring 3K-5 marlas along with construction thereon both present and future also identified as Kartar Palace situated at GT Road, Sarna, PO Malikpur, Pathankot comprised in Khasra*

No.12R//12/2/1/2(2-12), 12/2/1/1/1/2(0-10), 11/1/1(0-1), 12/1/1(0-2) total land 3K-5 marlas at village Sarna, Tehsil and District Pathankot registered in favour of Smt. Jasbir Kaur and

Plot/Land measuring 1K-6marlas along with construction thereon both present and futrue, which is 26/79 share of land comprised in khasra No.12R/8/2/1/1 (3-19) village Sarna, Tehsil and District Pathankot registered in favour of Sh. Lakhwinder Singh"

3. According to the petitioner, he was confined in District Jail, Dharamshala since 05.07.2016 and due to that he could not pay the installments in time and his account was classified as Non Performing Asset (in short 'NPA') on 31.10.2015. Thereafter, the bank issued a notice dated 16.03.2017 under Section 13(2) of the Act and asked the petitioner to make payment of ₹ 11,27,866/- as on 31.01.2017. The possession notice dated 22.06.2017 under Section 13(4) of the Act was issued to the petitioner. Feeling aggrieved, the petitioner filed the present writ petition.

3. On 31.05.2018, notice of motion was issued in the following terms by this Court:

"The SA filed by the petitioner has been dismissed being premature as physical possession of the secured assets is still with him. The petitioner is presently lodged in a jail due to his involvement in a heinous offence.

Notice of motion 01.11.2018.

Subject to petitioner's depositing ₹ 3 lacs within two weeks, status quo re: physical possession be maintained."

4. Learned counsel for the petitioner submitted that the petitioner is ready and willing to clear the outstanding dues or to regularize his account within a reasonable period.

5. Learned counsel for the respondent-bank has submitted that in case a reasonable proposal is made by the petitioner, the respondent-Bank shall consider the same.

6. After hearing learned counsel for the parties, perusing the petition and without expressing any opinion on the merits of the case, the present writ petition is disposed of with the following directions:

1. The petitioner shall approach the respondent-bank within one month from today by filing a detailed and comprehensive representation for clearing the outstanding dues or to regularize the loan account.
2. The petitioner shall deposit a draft amounting to ₹ 2 lakhs along with the representation.
3. Respondent-bank shall consider the representation submitted by the petitioner sympathetically in accordance with law, after affording an opportunity of hearing to the petitioner and pass a speaking order.
4. The decision on the representation shall be taken at the earliest by the respondent-bank but not later than two months from the receipt of such representation.
5. It is clarified that in case the petitioner fails either to submit his representation within the specified time or fails to deposit a draft of ₹ 2 lakhs, the respondent-bank would be at liberty to proceed in accordance with law.

4. The interim protection granted by this court vide order dated 31.05.2018 shall be maintained till a decision is taken by the respondent-bank on the representation submitted by the petitioner. However, it is

clarified that the interim protection shall not be construed as an expression of opinion on the merits of the case by this Court.

(MANJARI NEHRU KAUL)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

10.12.2018
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No