IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 15752 of 2018
Decided on : 03.07.2018

Ashok Kumar Gautam and another

. . . Petitioners

VS

Authorised Officer of Canara Bank and others

. . . Respondents

* * *

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

Present : Mr. S.S. Siao, Advocate
for the petitioners.

* * *

AVNEESH JHINGAN, J.

1. The present writ petition has been filed with the prayer for quashing of demand notice dated 13.10.2017 (Annexure P-1) for repayment of loan, notice dated 27.11.2017 (Annexure P-2) issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act') and possession notice dated 08.03.2018 (Annexure P-4), issued under section 13(4) of SARFAESI Act.

2. Petitioner No.1 is the borrower of a housing loan from Canara Bank. Petitioner No.2 who is wife of petitioner No.1, is guarantor and her house was mortgaged with the Bank for securing the loan.

3. Petitioner No.1 had taken a housing loan of ₹ 45,00,000/- (Rupees Forty Five Lacs Only) on 12.03.2014 from Canara Bank, Retail

Asset Hub, Sector 21-C, Faridabad-respondent No.1. The petitioners repaid a sum of ₹ 15,89,819/- (Rupees Fifteen Lacs Eighty Nine Thousand Eight Hundred and Nineteen Only) and thereafter defaulted in repayment of loan.

4. The Bank issued a recall notice dated 13.10.2017. As per notice, there were dues of ₹ 44,32,340/- (Rupees Forty Four Lacs Thirty Two Thousand Three Hundred and Forty Only). An opportunity was provided to the petitioners for clearing the due amount. Thereafter, a notice dated 27.11.2017 under Section 13(2) of SARFAESI Act was issued. In response thereto, petitioner No.1 filed a reply dated 22.01.2018, stating that due to ill health, he is not able to repay the loan amount. The Bank, exercising powers under Section 13(4) of SARFAESI Act, issued a possession notice dated 08.03.2018.

5. Learned counsel for the petitioners contended that the petitioners approached the Bank for grant of some time to repay the loan amount, but the Bank has proceeded to issue the possession notice.

6. A query was made to the learned counsel for the petitioners that whether any payment has been made by the petitioners after issuance of demand notice, he failed to show any payment made after 08.03.2018.

7. From the perusal of the statement of account (Annexure P-6), it is evident that after 31.05.2016, a paltry amount of ₹ 4,800/- (Rupees Four Thousand and Eight Hundred Only) has been deposited, that too in July, 2017, thereafter, no amount has been paid for repayment of loan.

8. The contention raised by the learned counsel for the petitioners that the petitioners intend to repay the loan amount is not backed up by the actions of the petitioners. Rather conduct of the petitioners *prima facie* shows lack of willingness to settle the dispute. The last major payment was

made in May, 2016 and thereafter no amount has been deposited for repayment of loan.

9. The petition lacks *bonafides* of the petitioners. The petitioners defaulted in repayment of loan for the first time in June, 2016. The Bank issued recall notice on 13.10.2017 and then a demand notice under Section 13(2) of SARFAESI Act in November, 2017. When nothing was deposited, possession notice was issued on 08.03.2018. It is evident that for a period of almost more than twenty months, no step worth consideration for repayment of loan has been taken.

10. No interference with the impugned notices is called for in exercise of writ jurisdiction.

11. Dismissed.

[AJAY KUMAR MITTAL]
JUDGE

[AVNEESH JHINGAN]
JUDGE

03.07.2018
pankaj baweja

Whether speaking/reasoned? *Yes/No*

Whether reportable? *Yes/No*