233

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 17658 of 2018
Decided on 29.08.2018

Jeewanjot Kaur and others

Petitioners

Versus

Central Bank of India, Jalandhar

Respondent

* * *

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

Present : Mr. Ferry Sofat, Advocate
for the petitioners.

Mr. Gaurav Goel, Advocate
for the respondent.

* * *

AVNEESH JHINGAN, J.

The present writ petition has been filed seeking quashing of possession notice dated 12.07.2018 [Annexure P-9] issued under Section 13(4) of the Securitization and Reconstruction of the Financial Assets and Security Enforcement Act, 2002 [for brevity 'the Act'].

2. Central Bank of India, Jalandhar has been arrayed as respondent in the writ petition.

3. The petitioners availed a cash credit limit of ₹32,88,000/- from the respondent-bank. In order to secure the loan, residential property measuring 286 sq. yards comprised in khasra no. 55/12/13 min situated at Gumtala, Sub-Urban Abadi Tehsil & District Amritsar was mortgaged with the respondent-bank. Brother of the petitioner

No.1 also availed a housing loan for which the same property was mortgaged. The petitioners defaulted in repayment of the cash credit limit availed. The account was classified as Non-Performing Asset (NPA) on 27.02.2017. The respondent-bank issued notice dated 29.12.2017 under Section 13(2) of the Act. As per notice, there was a total outstanding amount of Rs.37,22,128/-.

4. Thereafter, a notice dated 12.07.2018 was issued under Section 13(4) of the Act.

5. Aggrieved of the notice dated 12.07.2018, the present writ petition has been filed.

6. Learned counsel for the petitioners argued that cash credit facility is over drawn by ₹3 lakhs approximately and in order to show the *bona fides* of the petitioners, a cheque of ₹5 lakhs was produced in the Court. The same was returned back to the counsel for the petitioners with a direction to deposit the same with the respondent-bank within 3 days.

7. Notice of motion was issued for 30.07.2018.

8. On 30.07.2018, *status quo* was ordered to be maintained and the learned counsel for the petitioners submitted that demand draft of ₹2 lakhs more shall be produced in the Court.

9. Learned counsel for the respondent filed a calculation sheet of over due amounts of the petitioners as well as of the housing loan account of the brother of petitioner No.1 for which the same property has been mortgaged. As per calculation sheet, the sanction limit for over draft facility is ₹32,88,000/-, as on date, there are over dues of ₹2,40,196/-. Further, the petitioners have to pay ₹50,000/- for

fee of recovery agency and ₹59,835/- for publication and legal charges. There is an over due amount of ₹1,55,008/- in the housing loan account.

10. Learned counsel for the petitioners produced a demand draft No. 134 amounting to ₹1 lakh in the Court and two cheques bearing Nos. 47 and 50, total amounting to ₹90,000/-. The demand draft and cheques have been handed over to the learned counsel for the respondent-bank. Learned counsel for the petitioners further submitted that there is a difference in calculation of over due amount and the same needs to be reconciled. He further contended that the respondent-bank has wrongly charged the expenses for recovery agency and for publication and legal charges. He undertakes that after the reconciliation of the accounts, the petitioners would, by 30.09.2018, clear the over due amounts of the over draft limit as well as the housing loan.

11. After hearing the learned counsel for the parties, we find that the expenses amounting to ₹1,09,835/- which have been claimed by the respondent-bank are not legally payable by the petitioners. There is no legal justification which has been put-forth by the respondent-bank for the said charges. Similar charges have been deleted by the Division Bench of this Court in case reported as ***Paramjit Singh Vs. UCO Bank Ghudani Kalan & Another 2007(49) RCR Civil 325,*** wherein it has been held as under:-

> *We have heard learned Counsel for the parties at length and find that the expenses amounting to Rs. 43,300/- which have been claimed by the respondents are not*

legally payable by the petitioner. The learned Counsel for the respondents attempted to justify the incurring of aforesaid expenses by citing Security Interest (Enforcement) Rules 2002, but could not refer to any specific rule or provision of law or any material on record to substantiate that the expenses incurred by the respondents amounting to Rs. 43,300/- were in any way mandatory and necessarily required to be incurred. In the absence of any legal or valid justification, the liability of the same cannot be fastened on the petitioner.

12. The petitioners shall approach to the respondent-bank within 15 days from today for reconciliation of the accounts. After reconciliation of the accounts, the over due amounts of the over draft limit and the housing loan shall be cleared by 30.09.2018, after deducting the expenses of ₹1,09,835/- which are detailed below:-

Fee for Recovery Agency [Approx.]	Rs. 50,000/-
Publication and Legal Charges [Approx.]	Rs. 59,835/-

On payment of overdues, the account shall be regularized. It is clarified that in case of any default in repayment in both the accounts, the respondent-bank would be at liberty to proceed in accordance with law.

13. The writ petition is disposed of in above terms.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

29.08.2018
pankaj baweja

Whether speaking/reasoned: Yes / No

Whether reportable : Yes / No