124

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 19467 of 2018
Decided on : 06.08.2018

Nabha Agro Works, Patiala.

Petitioner

Versus

State of Punjab and others

Respondents

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

Present : Mr. Anupam Singla, Advocate for the petitioner.

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AVNEESH JHINGAN, J. *(Oral)*

The present writ petition has been filed with a prayer for quashing of possession notice dated 02.07.2018 (Annexure P-2), vide which the State Bank of India has initiated proceedings under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act').

2. State of Punjab; District Magistrate, Patiala and State Bank of India, Nabha, District Patiala have been arrayed as respondents No.1, 2 and 3 respectively, in the writ petition.

3. The petitioner is a proprietorship concern carrying on its business at Nabha, District Patiala. The petitioner availed cash credit limit of ₹20 lakhs from respondent No.3. The said limit was sanctioned on 27.08.2009. To secure the loan, petitioner hypothecated stocks, plant & machinery and land & building of the factory situated at Village Ghamrauda,

Tehsil Nabha, District Patiala. The aforesaid cash credit limit was enhanced to ₹40 lakhs on 18.09.2013. Cash credit limit was over drawn and no payment was made after November, 2017. The account was declared as Non-Performing Asset (NPA). Respondent No.3 issued notice dated 24.01.2018, under Section 13(2) of the SARFAESI Act. Since no payment was made, the respondent Bank applied to respondent No.2 for taking over physical possession of the hypothecated properties.

4. Aggrieved of the initiation of the proceedings for taking over physical possession of the hypothecated properties, the present writ petition has been filed.

5. Learned counsel for the petitioner argued that the proprietor of the petitioner's concern lost his only son on 28.11.2013. His son was looking after his business. There was a set back to the business and for this reason, no repayment of loan amount was made.

6. As per notice under Section 13(2) of the SARFAESI Act, an amount of more than ₹44 lakhs is due from the petitioner. The petitioner neither bothered to file any reply to the notice nor made any effort to clear the outstanding payment. It is unfortunate that son of the Proprietor died. It is a big loss for any parent. The fact remains that an unfortunate incident occurred in November, 2013. Thereafter, as per the pleadings in the petition, the payments were being made till November, 2017, this itself shows that the petitioner was continuing with his business.

7. The main aspect to be considered is that for the last more than eight months, not even a single penny has been paid by the petitioner. Even now, there is no concrete proposal for repayment. During the course of arguments, inspite of repeated queries by the Court, learned counsel for the

petitioner contended that petitioner cannot make payment of any amount to show the *bonafides*. The endeavour appears to delay the taking over the physical possession of the mortgaged properties. It appears that the petitioner has no interest in settling the account. The petition filed lacks *bonafides*.

8. No case is made out in exercise of the writ jurisdiction under Article 226 of the Constitution of India.

9. The writ petition is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

06.08.2018
pankaj baweja

Whether speaking/reasoned: *Yes / No*

Whether reportable : *Yes / No*