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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20324 of 2018
Decided on : 16.08.2018

* * *

M/s Kashmir Singh Surinder Pal and others

Petitioners

Versus

Authorized Officer, State Bank of India, Chandigarh and others

Respondents

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

Present : Mr. Narinder Singh Dadwal, Advocate
for the petitioners.

* * *

AVNEESH JHINGAN, J.

The writ petition has been filed seeking direction to the respondents for granting three months' more time to accept the balance outstanding loan amount so that the amount settled between the parties, as per order dated 29.08.2017 of the Debts Recovery Tribunal-II, Chandigarh (for short 'D.R.T.'), may be paid.

2. The petitioner No.1 is a proprietorship concern; petitioner No.2 is its proprietor and petitioner No.3 is wife of petitioner No.2. Authorized Officer of State Bank of India, Chandigarh; State Bank of India, Chandigarh and Deputy Commissioner-cum-District Magistrate, Union Territory of Chandigarh have been arrayed as respondents No.1 to 3 in the writ petition.

3. Petitioner No.1 was carrying on liquor business. For the purpose of said business, petitioner No.2 and 3 got sanctioned cash

credit facility of ₹1 crore and term loan of ₹13,46,000/- from respondent No.2. In order to secure the loan, petitioner No.2 and 3 mortgaged House No. 3574, Sector 23-D, Chandigarh. The petitioners defaulted in repayment of the credit facilities availed. The respondent No. 2 declared the accounts as Non-Performing Assets (N.P.A.s) on 03.03.2016 and 21.11.2016 respectively. A notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act') was issued on 29.11.2016. As per notice, a sum of ₹96,38,204/- was due. Since no payment was made, notice under Section 13(4) of the SARFAESI Act was issued on 27.6.2017.

4. The petitioners being aggrieved of the notices, approached the D.R.T. by filing S.A. No. 740 of 2017 under Section 17 of the SARFAESI Act. Without disputing the merits of the case, statement was made before the D.R.T. that they are ready to clear the account by making entire payment as mentioned in the possession notice. S*tatus-quo* was ordered to be maintained by the D.R.T. subject to the payment being made as per the schedule. It was further ordered that in case of failure of the petitioners to deposit the amount, as per schedule, the petitioners shall hand-over free and vacant possession of the secured property to the respondent-bank and bank would be free to proceed in the matter in accordance with law.

5. The payment schedule as fixed by D.R.T. was as follows:

On or before 05.09.2017	₹10,00,000/-
On or before 27.11.2017	₹30,00,000/-
On or before 27.12.2017	₹20,00,000/-
On or before 24.01.2018	₹10,00,000/-

On or before 05.09.2017	₹10,00,000/-
Or or before 29.03.2018	Balance alongwith simple interest on reducing balance.

6. The petitioners deposited a sum of ₹59,50,000/-, after order of the D.R.T., but failed to honour the commitment made before the D.R.T. by not depositing the balance amount.

7. The petitioners moved an application No. 28 of 2018 on 23.03.2018 contending that two months' time may be granted for repayment of balance amount. It was stated that the petitioners had defaulted as mother of petitioner No.2 expired in January, 2018 and thereafter his real uncle (*chacha)* also expired. The application was dismissed on 29.05.2018 by D.R.T. Thereafter, the respondent No.2-bank moved an application under Section 14 of the SARFAESI Act for taking over possession of the secured property. Respondent No.3, vide order dated 17.07.2018, allowed the application and ordered to take over the physical possession of the secured property.

8. At this juncture, the writ petition has been filed.

9. Learned counsel for the petitioners contended that the petitioners were ready to pay balance amount and if reasonable time is granted they will pay the balance amount, as per order dated 29.08.2017 of the D.R.T.

10. Petitioners made an application before the D.R.T. on 23.03.2018 seeking two months' time for repayment of the balance amount. The said application was dismissed on 29.05.2018 i.e. almost after 2 months. Even at the time of hearing of the application, the amount was not paid. After dismissal of the application two and a half

months more have passed. Even today, learned counsel for the petitioners had no instructions that the petitioners are ready to pay the balance amount. Prayer is being made that reasonable time may be granted to the petitioners to pay balance amount. The entire endeavour in present writ petition is to avoid handing over the possession of the secured property. The statement made before D.R.T. and time schedule fixed for repayment was not adhered to. The commitment that in case of failure to deposit the amount as per the schedule, the physical possession of the secured property shall be handed over, has not been honoured. The application moved for extension of time by two months was also only a method adopted to delay the repayment. More than five months have passed since filing of the application and even today the petitioners have not established their *bonafides* for repayment of balance amount. The petition lacks *bonafide.*

11. No case is made out for interference in exercise of writ jurisdiction by this Court under Article 226 of the Constitution of India.

12. The writ petition is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

16.08.2018
pankaj baweja

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