201

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.24048 of 2017
Decided on : 18.08.2018

* * *

Swarn Singh

Petitioner

Versus

Central Bank of India and another

Respondents

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

Present : Mr. Bharat Bhushan Sharma, Advocate
for the petitioner.

None for respondents.

* * *

AVNEESH JHINGAN, J.

This writ petition has been filed with a prayer for quashing notices dated 28.04.2017 (Annexure P-4) and 03.05.2017 (Annexure P-3) issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'). Further prayer has been made for quashing of notice dated 25.09.2017 (Annexure P-6) for taking over physical possession of the mortgaged properties.

2. Central Bank of India, Jawahar Market, Model Town, Rohtak and Central Bank of India, Main Branch, Nilokheri, District Karnal have been arrayed as respondents No.1 and 2, respectively in the writ petition.

3. The petitioner was running a Hatchery and for the business purposes, he took loan of ₹21,95,000/- from respondent-bank. The loan was sanctioned on 14.05.2013. Son of the petitioner also raised a loan of ₹35,00,000/- on 11.06.2013, under Small Enterprise-Service Scheme. The petitioner, in order to secure his own loan and to stand as guarantor for his son's loan, mortgaged six shops situated at Rajiv Colony, Ward No.6, Poultry Area, Nilokheri.

4. In both the loan accounts, there was default in repayment. The accounts were classified as Non-Performing Assets (NPAs) on 31.03.2017. The respondents issued notices dated 28.04.2017 and 03.05.2017 under Section 13(2) of the SARFAESI Act. The petitioner neither repaid the outstanding amount nor filed any reply to the notices. Thereafter, notices under Section 13(4) of the SARFAESI Act were issued on 27.07.2017. The respondents moved an application under Section 14 of the SARFAESI Act and District Magistrate, Karnal vide order dated 08.09.2017 ordered taking over of possession of the properties. E-auction of the properties was fixed for 22.09.2017. As no bid was received, the properties could not be auctioned. The respondent No.2-bank issued a notice in press for taking over of possession of the properties on 12.10.2017. At this juncture, the petitioner filed the present writ petition.

5. The contention of the learned counsel for the petitioner is that the daughter of the petitioner was killed by her in-laws on 11.04.2016 and due to that reason, he could not concentrate on business and there was default in repayment of the loans. It was contended that the petitioner would pay ₹1,50,000/- within two weeks

and clear the balance amount overdue alongwith due installments within one month therefrom. Notice of motion was issued and it was ordered that *status quo* be maintained regarding possession of the properties in dispute. Inspite of undertaking, the petitioner only deposited ₹80,000/-. On 26.04.2018, learned counsel for the respondent-bank submitted that the petitioner, if so desires, may submit One Time Settlement (OTS) proposal in respect of both the loan accounts. On 06.08.2018, learned counsel for the petitioner stated that petitioner is ready to discharge the liability as may be determined on acceptance of OTS and to show his *bonafides,* the demand draft of ₹5 lakhs would be produced in the Court on next date of hearing.

6. Heard learned counsel for the petitioner.

7. It was urged that the petitioner is willing and ready to clear the outstanding loan amounts but is not in a position to make upfront payment of ₹5 lakhs to show his *bonafide.*

8. From the perusal of the paper book, it is evident that amount of more than ₹50 lakhs is due in two loan accounts. ₹30,73,722/- is due in one account as on 27.04.2017 and ₹20,68,376/- is outstanding in another loan account as on 02.05.2017. From March 2017, admittedly no amount has been paid for clearing the outstanding dues. The undertaking given before this Court on 25.10.2017 that the petitioner would deposit ₹1,50,000/- within two weeks and clear the balance amount overdue alongwith due installments within one month therefrom has not been honoured. Another opportunity was given by this Court to produce the demand

draft of ₹5 lakhs to show the *bonafides* of the petitioner, which also has not been complied with.

9. In such circumstances, no fault can be found in the action of the respondent-bank in proceeding against the collateral securities mortgaged with it. On the other hand, the endeavour of the petitioner is to delay the inevitable. The petition lacks *bonafide.* The petitioner is only making bald statements which are not backed by any efforts to comply with the same.

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

11. The writ petition is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

18.08.2018
pankaj baweja

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