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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 25353 of 2017
Decided on 07.09.2018

Satyawan

Petitioner

Versus

Deputy Commissioner-cum-District Magistrate, Panipat and others

Respondents

* * *

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

Present : Mr. Ramesh Malik, Advocate
for the petitioner.

Mr. Yashveer Kharb, Advocate
for the respondents.

* * *

AVNEESH JHINGAN, J.

The present writ petition has been filed seeking quashing of order dated 01.09.2017 (Annexure P-5) passed under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Act').

2. The petitioner is one of the partners of M/s Shiv Dairy, Village Adiyana, Tehsil Madlauda, District Panipat. Deputy Commissioner-cum-District Magistrate, Panipat; Naib Tehsildar, Madlauda, District Panipat and UCO Bank, Panipat Branch have been arrayed as respondents No.1 to 3 respectively, in the writ petition.

3. The petitioner alongwith Jai Singh (now deceased), in partnership, started business of dairy farming in the name & style of

M/s Shiv Dairy. For the purpose of business, firm availed following credit facilities in the year 2012 from respondent No.3-bank:~

Nature of Facility	**Sanctioned Limit**
Cash Credit	₹5,00,000/-
Term Loan	₹6,19,995/-

In order to secure the loan, both the partners mortgaged their land measuring 23 Kanal 9 Marla and 14 Sarsai, comprised out of Khewat No. 210/191 Min, Khatoni No. 245, Khasra No. 97/3(7-11), Khatoni No.246, Khasra No. 97//8(7-11), Khewat No. 492//453, Khatoni No. 610, Khasra No.178//13(8-0), 18(8-0), 178//23(8-0), 189//3(8-0), Khewat No. 211/191 Min, Khatoni No. 247, Khasra No. 151//16/1(7-4), 25/2(6-12), 163//12(7-16), 13(8-0), 14(8-0), 15(8-0), 16(8-0) situated in the revenue estate of Village Adiyana, Sub-Tehsil Madlauda, District Panipat vide jamabandi for the years 2001-2002, Mutation No. 3883 & 3884 sanctioned on 16.10.1998, Mutation No. 4517 Sanctioned on 30.10.2006, fardbadar No.11 & 12 dated 27.04.2005 and Khasra Girdawari from Kharif 2010 to Kharif 2011.

4. There was some dispute between the partners and there was a default in repayment of loan and the respondent No.3-bank issued notice dated 29.05.2015 under Section 13(2) of the Act. As per notice, an amount of ₹44,55,198/- was due. The other partner Jai Singh died in the year 2017. Respondent No.3-bank moved an application on 07.07.2017 under Section 14 of the Act. Respondent No.2 passed order on the application on 01.09.2017.

5. Aggrieved of the order passed under Section 14 of the Act, the present petition has been filed.

6. Notice of motion was issued on 22.11.2017. The learned counsel for the petitioner submitted that the petitioner will deposit ₹10 lakhs within two weeks and pay the balance amount thereafter to save the mortgaged property. *Status quo* regarding possession of the property was ordered to be maintained subject to petitioner's depositing ₹10 lakhs. On 13.12.2017, learned counsel for the petitioner submitted that the petitioner will deposit ₹2.5 lakhs within three days and further ₹7.5 lakhs on or before the next date of hearing. At this stage, he stated that the petitioner will pay his half share of the loan amount and other half share may be recovered by selling the property of another partner.

7. The order dated 13.12.2017 was complied with and on 16.01.2018, learned counsel for the petitioner undertook to pay ₹3 lakhs more to the respondent No.3-bank within two months. *Status quo* regarding possession was restricted to half of the share of the land which was in possession of the petitioner. Thereafter, petitioner failed to deposit ₹3 lakhs as undertaken on 16.01.2018.

8. The contention of the learned counsel for the petitioner is that till date the entire repayment has been made by the petitioner only, the other partner and his legal heirs have not made any payment. He further submitted that the petitioner is ready to deposit half of the loan which is of his share and his mortgaged property should be released.

9. The contention raised by learned counsel for the petitioner cannot be accepted.

10. It has not been disputed that the loan was taken by the

partnership firm. Petitioner and Jai Singh were partners. The liability of the partners is co-extensive. The repayment of loan to the respondent No.3-bank cannot be stalled on the ground that there is dispute between the partners and that one of the partner is not discharging his share of liability. It is between the partners to settle their dispute *inter-se.* In case of a partnership firm, it cannot be contended by one of the partner that his liability is restricted according to his share and he will not discharge rest of the liability. The argument raised is against the provisions of Section 25 of Indian Partnership Act, 1932.

11. For reference, Section 25 of the Indian Partnership Act, 1932 is reproduced below :-

> "***25. Liability of a partner for acts of the firm***— *Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner."*

12. As per Section 25 of the Indian Partnership Act, 1932, every partner is jointly and severally liable for the acts of the firm. The petitioner is liable to clear the liability of the firm. The right of the bank while making recovery is not affected by the individual share percentage of each partner in the firm, it is something into the partners.

13. The Apex Court in ***Ashutosh Vs. State of Rajasthan and others, 2005 AIR (SC) 3434*** held as follows:-

> *"Under Section 25, the liability of the partners is joint and several. It is open to a creditor of the firm to recover the debt from any one or more of the partners. Each partner shall be liable as if the debt of*

the firm has been incurred on his personal liability."

14. The Supreme Court in ***Sahu Rajeshwar Nath Vs. Income Tax Officer, C-Ward, Meerut and others (1969) 72 ITR 617*** held as under :-

> *"Under the Partnership Act the liability of the partners of a firm is joint and several and it is open to a creditor of the firm to recover the debt of the firm from any one or more of the partners."*

15. In the light of the above mentioned authorities the contention of the petitioner that on discharge of half of the liability, his share of property may be released by the respondent No.3-bank, deserves rejection.

16. It is pertinent to note that while the notice of motion was being issued, it was stated that the petitioner would deposit Rs.10 lakhs and pay the balance thereafter to save the property mortgaged to secure the loan. Lateron, the stand was changed to the effect that petitioner would only pay half of the amount due i.e. his share. The undertaking was given on 16.01.2018 before this Court that the petitioner would deposit ₹3 lakhs more within two months. The said undertaking was flouted. Even today, learned counsel for the petitioner submitted that the petitioner is not in a position to pay ₹3 lakhs as undertaken before this Court.

17. The petition lacks *bona fide.* The alleged dispute between the partners is being used as a tool to deprive the respondent No.3-bank from recovering the outstanding dues. The property mortgaged was in joint ownership yet the endeavour is to get partial mortgaged

property released.

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

19. The writ petition is, hereby, dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

September 07, 2018
pankaj baweja

Whether speaking/reasoned: ***Yes*** */ No*

Whether reportable : ***Yes*** */ No*