211

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.25985 of 2017
Decided on 18.09.2018**

Asha Rani and another

Petitioners

Versus

Punjab and Sind Bank and another

Respondents

* * *

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

Present : Mr. Pardeep Sehrawat, Advocate
for the petitioner.

Mr. P.S. Jammu, Advocate and
Mr. Deepak Kohli, Advocate
for the respondents.

* * *

AVNEESH JHINGAN, J.

The present writ petition has been filed seeking quashing of order dated 05.07.2016 (Annexure P-4) passed by the District Magistrate, Gurgaon and possession notice dated 09.10.2017 (Annexure P-5).

2. Punjab and Sind Bank, Gurgaon and State of Haryana through District Magistrate, Gurgaon have been arrayed as respondents No.1 and 2 respectively in the writ petition.

3. Petitioners No.1 and 2 are husband and wife. They purchased House No.31, Block-D, Rajendra Park, Gurgaon measuring 59.6 sq. yards, in the year 2014. Petitioners availed loan

facility of ₹17 lakhs from respondent No.1-bank. In order to secure the loan, the abovesaid house was mortgaged. The loan was to be repaid in 240 equal monthly installments (EMI's) of ₹16,750/-. There was a default in repayment of loan. The account was classified as Non-Performing Asset (NPA) on 31.03.2015. A notice dated 05.05.2015 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Act') was issued. Thereafter, a possession notice under Section 13(4) was issued on 19.08.2015 and it was published in the newspaper on 26.08.2015. There were outstanding dues of ₹18,17,537/- as on September 2015. An application was moved under Section 14 of the Act by respondent No.1. Respondent No.2 passed order dated 05.07.2016 directing the Tehsildar-cum-Executive Magistrate, Gurgaon to take over physical possession of the mortgaged property. Respondent No.1 took over the physical possession of the mortgaged property. Aggrieved of the recovery proceedings, the present petition has been filed.

4. Learned counsel for the petitioners submitted that the petitioners would deposit ₹1 lakh within one week and will deposit the entire overdue amount within a period of two months thereafter to regularize the loan account.

5. Notice of motion was issued on 15.11.2017. During the pendency of the writ petition, the petitioner deposited ₹1 lakh and it was ordered that the possession of the house be delivered back to the petitioners subject to petitioners' depositing another sum of ₹1 lakhs.

6. Learned counsel for the petitioners contended that the

petitioner No.2 met with an accident and as a result his one arm was amputated. The petitioners intend to clear the overdue amount and regularize the loan account. They shall be paying the due EMI's on time. He submitted that keeping in view the facts of the case, the respondent No.1 should consider the case for waiving off interest on delayed payment.

7. Learned counsel for the respondent No.1 argued that the petitioner has not even approached the bank with any such request.

8. Without expressing any opinion on the merits of the case, the writ petition is disposed of with a direction that the petitioners would approach the respondent No.1 within 15 days from today, with the proposal to clear the overdue amount and with the request for waiver of penal interest on delayed payment. On receipt of such a request, the respondent No.1-bank would decide the same in accordance with law after affording an opportunity of hearing to the petitioners. The decision shall be taken at the earliest, but not later than 30 days from the receipt of the proposal. After the decision by respondent No.1, the petitioners shall clear the overdue amount within two months from the date of decision.

9. This Court vide order dated 19.03.2018 granted interim protection to the petitioners that no coercive action shall be taken against them till further orders. The interim protection shall continue till the period prescribed in this order for clearance of the overdue amount expires.

10. It is, however, clarified that in case of failure of the petitioners to clear the overdue amount within the specified period or

on failure to deposit the due EMI's on time, the physical possession of the mortgaged property shall be handed over to the respondent No.1.

11. The writ petition is disposed of, accordingly.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

September 18, 2018
pankaj baweja

Whether speaking/reasoned: Yes / No

Whether reportable : Yes / No