IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 27719 of 2017
Decided on : 19.09.2018

Satish Kumar ...... Petitioner

Versus

State of Haryana and others ...... Respondents

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

Present : Mr.Vikas Sharma, Advocate
for the petitioner.

Mr. Sandeep Suri, Advocate
for the respondent-bank.

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AVNEESH JHINGAN, J.

The present writ petition has been filed seeking quashing of notice dated 06.09.2017 (Annexure P-1) issued under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for brevity, 'the Act'), notice dated 24.10.2017 (Annexure P-2), order dated 25.09.2017 (Annexure P-3) passed by District Magistrate, Bhiwani and notice dated 20.11.2017 (Annexure P-4) for auction of the property.

2. State of Haryana, Branch Manager, ICICI Bank Limited, Rohtak and ICICI Bank Ltd., Industrial Area, Chandigarh, have been arrayed as respondents No.1 to 3 respectively in the present writ petition.

3. Virender Vats, brother of the petitioner availed a cash credit limit of ₹21,50,000/- from respondent No.2. In order to secure the loan, the petitioner stood as a guarantor and mortgaged his property bearing MC

No.D-765-A, Hanuman Dhani Chowk, Circular Road, Bhiwani, measuring 81 Sq. yards.

4. There was a default in repayment and the account was classified as non performing asset (NPA) on 16.03.2016. The respondent-bank initiated proceedings under the Act. The symbolic possession of the mortgaged property was taken vide notice dated 06.09.2017. Notice under Section 13(4) of the Act was issued on 24.10.2017**.** The respondent-bank moved an application under Section 14 of the Act to the District Magistrate, Bhiwani. On the said application an order was passed on 25.09.2017 for taking over the possession of the mortgaged property. The possession of the property was taken over by the respondent-bank. Notice dated 20.11.2017 was issued for fixing the date of auction. Aggrieved of the fixing of auction, the present writ petition has been filed.

7. On 06.12.2017, learned counsel for the petitioner contended that the reserved price of the mortgaged property had been fixed at ₹21.5 lakhs. The petitioner is ready and willing to pay ₹5 lakhs within a period of one week and balance amount thereafter. Notice of motion was issued. Subject to the petitioner's depositing ₹5 lakhs as undertaken, the auction of the property in dispute was stayed.

8. On 29.01.2018, learned counsel for the petitioner stated that the petitioner had earlier deposited ₹4 lakhs, followed by another payment of ₹5 lakhs under the order of this Court. The petitioner is ready and willing to pay the balance amount in 10-12 monthly installments provided that physical possession of the shop is handed over to him. It was ordered that symbolic possession of the shop would remain with the bank but physical possession was handed over to the petitioner as an interim

measure subject to the petitioner's depositing an amount not less than ₹1 lakh per month with the bank. For ready reference, the order dated 29.01.2018 is quoted below :-

> *"The petitioner is the guarantor who earlier paid a sum of ₹4 lacs followed by another payment of ₹5 lacs under the order of this Court dated 06.12.2017. The total loan amount is stated to be ₹16,38,000/-. The petitioner is ready and willing to pay the said amount in 10-12 monthly instalments provided that the physical possession of the shops is handed over as that is the only source of livelihood/income. It appears to us fair that let the physical possession of the shops be handed over to the petitioner as an interim measure subject to the condition that he will have to deposit not less than ₹1 lac per month to the Bank. The symbolic possession will continue with the Bank and in case the petitioner defaults, the Bank shall be at liberty to take over physical possession with police assistance. Let the respondent-Bank thus hand over physical possession of the shops to the petitioner within one week. The petitioner shall deposit next instalment of ₹1 lac before 7th February, 2018."*

9. On 27.02.2018, learned counsel for the petitioner informed that the petitioner has deposited ₹1 lakh and the physical possession of the shop has been handed over to the petitioner. It was informed that as on date the balance amount of loan is ₹15.38 lakhs. It was ordered that the petitioner shall continue to pay ₹1 lakh per month as already directed by this Court vide order dated 29.01.2018.

10. The petitioner moved an application i.e. CM No.6858 of 2018

for recalling the order dated 27.02.2018. The same was disposed of. However, the petitioner was permitted to raise all the contentions at the time of final hearing. Thereafter, the case was adjourned to 08.08.2018 on the request of learned counsel for the petitioner.

11. Heard learned counsel for the parties.

12. Learned counsel for the respondents contended that after handing over the physical possession of the shop, the petitioner has not complied with order dated 29.01.2018.

13. Learned counsel for the petitioner stated that after handing over of the physical possession, the petitioner was not able to deposit ₹1 lakh every month from 07.02.2018 onwards.

14. The conduct of the petitioner lacks bonafide. The order dated 29.01.2018 passed by this Court has been flouted. The readiness and willingness of the petitioner to repay the outstanding dues vanished as soon as the physical possession of the shop was given back to the petitioner. The entire endeavour of the petitioner appears to delay the auction of the mortgaged property. The petitioner was able to stall the auction proceedings by showing his willingness to pay the reserved price fixed for the property, but the said undertaking was not complied with.

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

16. The physical possession of the mortgaged property was earlier taken by the bank but the same was handed over to the petitioner under the direction of this Court subject to the petitioner's complying with the terms and conditions of the order. The petitioner has failed to comply with the order of this Court. Hence, respondent No.1 is directed to provide police

help to respondent No.2-bank for taking over the physical possession of the mortgaged property.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

September 19, 2018
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Whether speaking/reasoned: Yes

Whether reportable : Yes