IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-27833-2018

Date of Decision: 30.10.2018

M/s Annapurna Agro Tech and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

PRESENT: Mr. Aalok Jagga, Advocate for the petitioners.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioners have prayed for issuance of a writ in the nature of certiorari for quashing the sale notice dated 10.10.2018 (Annexure P-21) issued by the respondent-Bank vide which their mortgaged properties have been put to sale for 14.11.2018 inspite of the fact that the petitioners have already applied for One Time Settlement Scheme (OTS) vide letter dated 25.6.2018 (Annexure P-17). Further, a writ of mandamus has been sought directing the respondent-Bank to consider the application dated 25.6.2018 (Annexure P-17) moved by the petitioners.

2. Petitioner No.1-M/s Annapurna Agro Tech, a Partnership Firm had availed Cash Credit Limit of ₹ 2 crores and Machinery Term Loan of ₹ 65 lakhs which was sanctioned vide letter dated 4.11.2011 (Annexure P-1). Petitioner No.2 was initially sanctioned a Cash Credit Limit of ₹ 2 crores which was later on, unilaterally increased to ₹ 2.30 crores vide letter dated

2.1.2012 (Annexure P-2). Respondent No.4 had debited the loan account of ₹ 27.50 lakhs of petitioner No.1 and credited the same to the account of M/s Sikand Motors by forging the signatures of one of its partners. The petitioners got registered FIR No. 29 dated 18.5.2012, under Sections 420, 467, 468 and 471 of Indian Penal Code at Police Station, Division No.1, Pathankot (Annexure P-3). The challan under Section 173 of the Code of Criminal Procedure was presented before the trial Court and the charges have been framed against the officials of respondent No.4 vide order dated 23.1.2013 (Annexure P-4). Pursuant to the registration of the said FIR, the petitioners could not deposit the interest till 31.8.2012 and, therefore, one of the loan accounts became NPA. In March, 2015, the petitioners sold off their personal property which was not mortgaged to the Bank and deposited ₹ 40 lakhs and on 25.11.2015, with the permission of the Bank, the petitioners sold their rice sheller property and deposited ₹ 2 crores to reduce to loan limit and thereafter, the petitioners had also deposited the amount as is clear from the list, Annexure P-5. Respondent-Bank issued a notice dated 22.11.2017 (Annexure P-6) under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short “the SARFAESI Act”) to petitioner No.1 to deposit a sum of ₹ 1,23,91,362.75 as on 30.9.2017 in the loan account of petitioner No.1. Similarly, notice dated 22.11.2017 (Annexure P-7) under Section 13 (2) of the SARFAESI Act was also issued to petitioner No.2 to deposit an amount of ₹ 3,58,63,454.50. Vide notices dated 7.2.2018 (Annexures P-8 and P-9, respectively), the respondent-Bank sought symbolic possession of the mortgaged properties in the loan account of petitioners No.1 and 2. Feeling aggrieved, the petitioners filed SA-40-2018 on 15.2.2018

(Annexure P-10) before the Debts Recovery Tribunal-III (hereinafter referred to as "the Tribunal"). Vide order dated 12.3.2018 (Annexure P-11), the said SA was dismissed as withdrawn. According to the petitioners, they had never requested the counsel to withdraw the SA and that they were never informed by the counsel for withdrawal of the case. The petitioners had also filed a complaint, Annexure P-12, against the counsel before the Bar Council of Punjab and Haryana at Chandigarh. A misc. application dated 28.6.2018 (Annexure P-13) in the said SA for recalling the order dated 12.3.2018 (Annexure P-11). The Tribunal vide order dated 31.7.2018 (Annexure P-14) dismissed the said application. Thereafter, the petitioners filed CWP-20999-2018 which was heard and reserved for orders vide order dated 27.8.2018 as is clear from the case status (Annexure P-15). The respondent-Bank came up with OTS Scheme, Annexure P-16 for settling the NPA accounts under the said Scheme. In response thereto, the petitioners requested to consider their case vide letter dated 25.6.2018 (Annexure P-17). The said application was replied vide letter dated 29.6.2018 (Annexure P-18) that they had received the application and were calculating the amount under the OTS Scheme. The petitioners were requested to visit the Branch upto 30.6.2018, on which date, the petitioners visited the Branch of the Bank as is clear from the photographs (Annexure P-20) and took a calculation of the amount payable under the OTS Scheme. They had also calculated the amount (Annexure P-19) as per the OTS Scheme. After taking the OTS Scheme by the petitioners on 25.6.2018, the Bank informed them that they should await for the calculations to be provided by the Bank. However, the Bank had not provided the calculation as per the OTS Scheme. The respondent-Bank issued a sale notice dated 10.10.2018

(Annexure P-21) vide which the properties of the petitioners have been put to sale on 14.11.2018. Accordingly, the petitioner sent a calculation letter dated 17.10.2018 (Annexure P-22) to respondent No.4 reiterating the OTS amount, but no response has been received till date. The respondent-Bank has also approached respondent No.3 who has summoned the petitioners vide order dated 4.7.2018 (Annexure P-23). Hence, the present writ petition.

3. Learned counsel for the petitioners submitted that for the relief claimed in the writ petition, the petitioners have sent a letter dated 17.10.2018 (Annexure P-22) to respondent No.4, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioners, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.4 to take a decision on the letter dated 17.10.2018 (Annexure P-22), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioners within a period of 10 days from the date of receipt of the certified copy of the order.

(AJAY KUMAR MITTAL)
JUDGE

October 30, 2018 **(MANJARI NEHRU KAUL)**
gbs **JUDGE**

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**