

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

**CWP No. 28024 of 2018
Decided on : 31.10.2018**

Jagpal Singh

... Petitioner(s)

Versus

State Bank of India and others

... Respondent(s)

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

PRESENT: Mr. Karan Nehra, Advocate
for the petitioner(s).

AJAY KUMAR MITTAL, J. (Oral)

The prayer made by the petitioners in this writ petition filed under Articles 226/227 of the Constitution of India, is for quashing the impugned notices dated 13.02.2018 & 27.04.2018 (appended as Anneuxres P-4 & P-5, respectively), issued by respondents No.1 & 2 and impugned order dated 25.06.2018 (Annexure P-12), passed by respondent No.5. A further prayer for issuing direction to the respondents not to recover possession of the agricultural land-cum-sole residential house constructed on the land owned by the petitioner, which is stated to be used for agricultural purpose, has also been made.

2. The petitioner is owner of the agricultural land measuring 70 Kanal - 0 Marla, in the revenue estate of Village Hema Majra, Tehsil Barara, District Ambala. To manage the agricultural property, the petitioner has constructed a farmhouse/residential house, which in fact is also the sole residential house in some portion of the land. The said residence is part of the agricultural land only and the said land is being used for agricultural activity only for all intents and purposes. The petitioner owned a loan of ₹ 10.00 lakhs from the erstwhile State Bank of India (now State Bank of India) vide loan agreement dated 29th April, 2016 by creating a mortgage of the 2 Kanal land area on which partly his house has been built. The loan

was for a period of 12 years with a monthly installment of ₹ 11,800/- p.m. As per the

income certificate issued by SDO (C) Barara, Ambala, the annual income of the petitioner is ₹ 8.00 lakhs. The loan was taken by the petitioner only for his agricultural purpose and house. The petitioner deposited a sum of ₹ 88,625/- on 08.12.2016 in the loan account after the sale of crops. Further, the petitioner being the sole breadwinner of the family and due to repayment of sum of private loan taken for wedding of his daughter and education of his children could not make the repayment of the loan from January 2017 till March 2018. On the other hand, unfortunately due to heavy rain and hailstorm in the area, the petitioner suffered a huge loss in his paddy grain, the petitioner could not pay the installment in time. The petitioner received a notices on 13.02.2018 & 27.04.2018 under Sections 13(2) & 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (in short 'the Act') from the respondent-Bank. However, the notice under Section 13(4) of the Act was never received by the petitioner. After receiving the notice under Section 13(2) of the Act, the petitioner apprised the respondent Bank for the default in making the payment. After collecting the money on account of sale of crops, the petitioner went to the respondent-Bank and met respondents No.3 & 4 and handed over a sum of ₹1,70,000/- to them, towards repayment of loan amount till August, 2018. After got signatures on certain documents by the petitioners, the respondents assured the petitioner that his loan account will be regularised. But the petitioner was shocked when the official respondents No.1 & 2 came to the land of the petitioner to take forcibly physical possession of the residential as well as agricultural land that was mortgaged with the respondent Bank between 08.10.2018 to 19.10.2018. However, due to intervention, the respondents could not take the possession of the property. The petitioner forthwith contacted the respondent-Bank officials but they pull back from their earlier assurance and told that the amount deposited by the petitioner towards the repayment of loan amount has not been adjusted in the loan account, as

the Bank has already obtained an order for taking over the physical possession of the mortgaged property. Petitioner went to respondent No.4 but they refused to accept any representation of the petitioner. After that, the petitioner filed a civil suit for permanent injunction before the Civil Judge, Senior Division, Ambala with a prayer for permanent injunction as well as application under Order 39 Rule 1 & 2, but the said civil suit had been dismissed as withdrawn vide order dated 29.10.2018. The petitioner gave a representation dated 25.10.2018 to the Bank officials, which has not been dealt with by the respondents and to the contrary the Bank officials told the petitioner that now they shall recover the money by auction of the agricultural land as well as the sole residential house of the petitioner. The petitioner came to know from the village Chowkidar on 23.10.2018 that regarding the order dated 25.06.2018, the Bank had already invoked the provision under Section 14 of the Act, whereby, the District Magistrate, Ambala, without issuing any notice to the petitioner or without verifying that the land is a parcel of the agricultural activity, gave directions for taking over the physical possession of the land of the petitioner. The said order was passed without giving any opportunity of hearing to the petitioner or even without serving upon him any notice. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, a representation dated 25.10.2018 (Annexure P-11) was submitted to the respondents, but no decision thereon has been taken by them so far. He, however, prayed that direction be issued to the concerned respondent to decide the representation expeditiously in a time bound manner and since the petitioner is in possession of the property in dispute, therefore, till the decision of the representation *status quo* regarding possession may be maintained.

4. After hearing learned counsel for the petitioner, perusing the averments made in the writ petition and without expressing any opinion on the merits of the case, while disposing of the writ petition we direct respondent No.2 to decide the

representation dated 25.10.2018 (Annexure P-11), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of 15 days from the date of receipt of certified copy of the order. It is, however, clarified that till the representation is decided by respondent No.2, *status quo* shall be maintained by the parties.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

October 31, 2018

J.Ram

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