

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

**CWP No.5284 of 2018
Decided on 26.09.2018**

Sunil Kumar & another

Petitioners

Versus

Punjab National Bank & others

Respondents

* * *

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

Present : Mr. V.K. Sachdeva, Advocate and
Mr. Gunjan Mehta, Advocate
for the petitioners.

Mr. D.K. Gupta, Advocate
for respondent No.3.

Mr. Ayuwan Singh, AAG, Haryana.

* * *

AVNEESH JHINGAN, J.

The present writ petition has been filed seeking quashing of order dated 12.01.2018 (Annexure P-7) passed by the District Magistrate, Rohtak under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Act') for providing police help to take over possession of the mortgaged residential house.

2. Petitioner No.1 is son of petitioner No.2. Both mother and son are the borrowers of loan. Punjab National Bank, Delhi Branch; Divisional Office, Recovery Branch, Punjab National Bank, Rohtak; Branch Manager, Punjab National Bank, Branch Office, Meham; District Magistrate, Rohtak and Tehsildar, Meham, District Rohtak

have been arrayed as respondents No.1 to 5 respectively, in this writ petition.

3. Petitioner No.1 and 2 availed term loan of ₹8,01,000/- and cash credit limit of ₹2 lakhs from respondent No.3. The credit facilities were sanctioned on 18.08.2016. The term loan was to be prepaid in 60 equal monthly installments (EMI's). In order to secure the credit facilities availed, residential house measuring 69.83 sq. yards bearing House No.138, Ward No.1, Meham, District Rohtak was mortgaged.

4. The petitioners failed to maintain financial discipline of the credit facilities availed. The accounts were classified as Non-Performing Assets (NPAs) on 04.08.2017.

5. Respondent No.3 issued notice under Section 13(2) of the Act on 04.08.2017. As on 29.07.2017, amounts of ₹8,15,042/- in the term loan and ₹2,19,668/- in the Cash Credit alongwith interest and other charges were outstanding. Petitioners failed to repay the amount. Respondent No.3 vide letter dated 11.08.2017 asked the petitioners to contact the bank for clearing the loan amounts. A legal notice dated 22.08.2017 was also issued by respondent No.3. Notice dated 07.10.2017 was issued under Section 13(4) of the Act. Thereafter, an application under Section 14 was moved by respondent No.3. After giving an opportunity of raising objections to the application, respondent No.4 vide letter dated 12.01.2018, directed Tehsildar, Meham to take over possession of mortgaged property and hand over the same to the authorised officer of the Bank.

6. Aggrieved of the proceedings for taking over possession of the secured property, the present writ petition has been filed.

7. On 05.03.2018, petitioners brought a draft of ₹2 lakhs to establish their *bona fides*. Notice of motion was issued and dispossession of the residential house was stayed subject to the petitioners' depositing demand draft of ₹2 lakhs with respondent No.3.

8. On 13.08.2018, learned counsel for the petitioners prayed for time to deposit overdue installments alongwith interest at the rate of 8.65% so that the accounts of the petitioners can be regularized.

9. Heard learned counsel for the parties.

10. Learned counsel for the petitioners stated that an amount of ₹2 lakhs has already been deposited in compliance with the order dated 05.03.2018. It was further stated that the petitioners would clear the entire outstanding amount of cash credit limit within three days. It was next submitted that petitioners will clear the overdue installments alongwith reasonable interest and would deposit installments due till December, 2018 in advance, within a period of 15 days and the petitioners undertake that future installments would be paid on time. It was prayed that bank may not charge the legal expenses & penal interest and on payment of overdues, the term loan account should be regularized.

11. Learned counsel for the respondent-bank contended that the calculation of the overdue amounts as on 30.06.2018 has been annexed with the reply. In the calculation chart, the bank has charged agreed rate of interest @ 8.65% on the term loan plus 2% penal interest and legal expenses of ₹58,349/-. It was argued that as regard cash credit limit, a total amount of ₹2,28,000/- is due.

12. Learned counsel for the petitioners stated that during the

pendency of the writ petition, amount of ₹2 lakhs have already been deposited and balance amount of ₹28,000 would be deposited within three days from today. These payments would clear the liability of cash credit limit.

13. In view of the statement made by learned counsel for the petitioners, it is ordered that ₹2 lakhs deposited in compliance with the order dated 05.03.2018 should be appropriated towards the cash credit limit and the petitioners would deposit the balance amount of ₹28,000 within three days from today. It shall be the duty of the counsel for respondent No.3 to inform the bank that ₹2 lakhs deposited is to be appropriated towards the cash credit limit. In the term loan, the agreed rate of interest was 8.65%. The petitioners alongwith defaulted installments due shall pay interest @ 8.65% p.a. for the delayed period in making the payments of installments due. On petitioners' clearing the overdue amount and paying the installments due upto December, 2018 alongwith interest as stated above, within 15 days from today, the term loan should be regularized.

14. In the other account i.e. term loan, the repayment was to be made in 60 monthly installments i.e. Upto July, 2021. No doubt, there was a default in paying the installments and the accounts have been classified as NPAs. The irregularity of the accounts and the accounts becoming NPAs are not irreversible acts. It is not the case that an account once a NPA shall always remain NPA. The Division Bench of this Court in the case of **M/s. Oswal Spinning & Weaving Mills Ltd. vs. Reserve Bank of India and others**, numbered as

CWP No.13888 of 2015, in its decision dated 11.04.2016, relying upon

Clauses 4.2.5 and 4.2.7 of the Master Circular of Reserve Bank of India and concurring with the decision of the Division Bench of Andhra Pradesh High Court in the case of **Sravan Dall Mill P. Limited Vs. Central Bank of India and another 2010 AIR (AP) 35** held as under:

- “9. Clause 4.2.5 which falls for our consideration is similar to Clause 4.2.4 which fell for the consideration of the Andhra Pradesh High Court. We are in respectful agreement with these observations in the judgment. The entire purpose of the circular and the policy contained therein would be defeated if a view to the contrary is taken. The circular does not condemn an account as an NPA merely on account of non-payment. Detailed parameters are provided in the circular for an account to be classified an NPA. Further, the accounts of various organizations have been categorized differently. In Clause-4, for instance, banks are required to classify non-NPAs into three categories, namely, sub-standard assets, doubtful assets and loss assets, based on the period for which the assets have remained non-performing and the realisability of the dues. This is an indication against the view that once an account is considered NPA it remains a NPA throughout irrespective of anything.
10. Further, to have an account upgraded from an NPA to a standard account, it is not necessary that the entire amounts due from the borrower to a creditor are paid in full. It is sufficient if the amounts due at the material time towards principal and interest are paid. This is clear from the opening words of the first sentence of Clause 4.2.5 of the Master Circular – “If arrears of interest and principal are paid by the borrower”. These words clearly indicate that payment of the amounts due at a particular point of time towards interest and principal is

sufficient for the account not to be treated any longer as an NPA and to have the same classified as a standard account. If it were otherwise, the clause would have been worded entirely differently. It would have required the borrower to pay all the dues of the lender. Indeed, in that event, there would be no question of reclassifying the account from an NPA to a standard account for upon repayment the account would stand closed. Clause 4.2.5 contemplates the continuation of the accounts and not the closure thereof.”

15. Adverting to the next issue, in the calculation annexed by the respondent-bank, the bank has charged 2% penal interest and have claimed legal expenses amounting to ₹58,349/-. Keeping in view the fact that there was no repeated default and the bank has already been compensated for the delay by payment of additional interest at 8.65% for the delayed period, in such circumstances, the penal interest shall not be charged by the bank.

16. In the calculation, legal expenses have been claimed but in course of hearing, no legal justification has been putforth by the respondent-bank for the said charges. We find that legal expenses of ₹58,349/- claimed by the bank are not legally payable. Similar charges were deleted by the Division Bench of this Court in the case reported as **Paramjit Singh Vs. UCO Bank Ghudani Kalan & Another 2007 (49) RCR Civil 325**, wherein it has been held as under:-

“We have heard learned Counsel for the parties at length and find that the expenses amounting to Rs. 43,300/- which have been claimed by the respondents are not legally payable by the petitioner. The learned Counsel for

the respondents attempted to justify the incurring of aforesaid expenses by citing Security Interest (Enforcement) Rules 2002, but could not refer to any specific rule or provision of law or any material on record to substantiate that the expenses incurred by the respondents amounting to Rs. 43,300/- were in any way mandatory and necessarily required to be incurred. In the absence of any legal or valid justification, the liability of the same cannot be fastened on the petitioner.

17. However, it is clarified that after the deposit of over due amount by the petitioners, if there is any difference in calculation of interest or the overdue amount, the bank shall inform the petitioners. The bank shall provide an opportunity of hearing to the petitioners for reconciliation of the calculations and thereafter, convey the balance, if any, payable. The petitioners shall discharge the balance amount within 15 days thereafter.

18. In case of failure of the petitioners to comply with the undertaking given before this Court, the possession of the mortgaged property shall be handed over by the petitioners to the bank.

19. The writ petition is disposed of, accordingly.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

September 26, 2018
pankaj baweja

Whether speaking/reasoned: Yes / No
Whether reportable : Yes / No