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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.8026 of 2018 (O&M)
Decided on 04.10.2018

Birbal Saini

Petitioner

Versus

State of Haryana and others

Respondents

* * *

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

Present : Mr. Ravinder Singh Dhull, Advocate
for the petitioner.

Mr. Mukesh Kumar Gupta , Advocate
for the respondents.

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AVNEESH JHINGAN, J.

The present writ petition has been filed seeking quashing of notice dated 08.11.2017 (Annexure P-3) issued under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Act').

2. The petitioner is the borrower of loan. State of Haryana; Regional Manager, Sarv Haryana Gramin Bank, District Nuh, Haryana and Ferozepur Jhirka Branch of Sarv Haryana Gramin Bank, District Nuh have been arrayed as respondents No.1 to 3, respectively in the writ petition.

3. The petitioner, for establishing a Computer Shop took a loan from respondent No.2 on 17.10.2011. In order to secure the loan,

residential house of the petitioner situated at Ward No.11, Saini Mohalla under the Municipal Limits of Ferozepur Jhirka, Distt. Nuh, plot No. 234 and its essential parts measuring 327.77 square yards was mortgaged.

4. The petitioner defaulted in repayment of loan. The respondent-bank issued notice under Section 13(2) of the Act on 30.05.2017. Thereafter, petitioner tried to settle the account with the respondent-bank and deposited ₹1 lakh in the year 2017 but defaulted later as he suffered injuries when attacked by monkeys and got bed ridden. Notice under Section 13(4) of the Act was issued to take possession of mortgaged property. The present writ petition has been filed being aggrieved of the recovery proceedings.

5. On 02.04.2018, learned counsel for the petitioner contended that there is a balance amount of approximately ₹4 lakhs and the petitioner is willing to pay the same within a reasonable time. Notice of motion was issued. Subject to the petitioner's depositing ₹1 lakh within one week, it was ordered that status quo of the physical possession of the residential house be maintained. It was further ordered that the petitioner shall pay another sum of ₹1 lakh before 10.05.2018 and third installment of ₹1 lakh on or before 01.06.2018.

6. Learned counsel for the petitioner contended that petitioner is a 80 years old man and is not keeping good health, but deposited ₹1 lakh after 02.04.2018 and has been able to bring a cheque of ₹25,000/- today in the Court and is willing to settle the account with the respondent-bank.

7. Learned counsel for the respondent-bank contended that

the petitioner has not approached the respondent-bank to settle the account.

8. Without expressing any opinion on the merits of the case and keeping in view the totality of facts and circumstances, the writ petition is disposed of with the following directions:

(i) ***A cheque of ₹25,000/- produced in the Court has been handed over to learned counsel for the respondent-bank. The Bank shall be entitled to encash the same without prejudice to its rights.***

(ii) ***The petitioner shall, within 15 days from today, approach the respondent-bank with a reasonable offer and a time schedule for repayment of the outstanding amount.***

(iii) ***After hearing the petitioner, the respondent-bank shall decide the representation in a sympathetic manner, in accordance with law after affording opportunity of hearing to the petitioner, by passing a speaking order.***

(iv) ***The decision shall be taken by respondent-bank at the earliest but not later than one month from the receipt of representation.***

(v) ***It is clarified that in case the cheque of ₹25,000/-, produced today in the Court, is dishonoured, the respondent-bank shall be at liberty to summarily reject the representation made by the petitioner.***

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

October 04, 2018
pankaj baweja

Whether speaking/reasoned: Yes / No

Whether reportable : Yes / No