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

**CWP No. 8459 of 2018
Decided on : 09.08.2018**

M/s Jessa Ram Khushi Ram Pvt. Ltd., Panipat and another
Petitioners

Versus

Bank of Baroda, Panipat and another
Respondents

* * *

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

Present : Mr. Vishal Sharma, Advocate
for the petitioners.

Mr. G.S. Anand, Advocate
for the respondents.

* * *

<u>AVNEESH JHINGAN, J.</u>

The present writ petition has been filed seeking a direction to the respondent-bank to grant more time for depositing balance outstanding amount under One Time Settlement (hereinafter referred to as 'O.T.S.'). Further prayer has been made that respondent-bank be directed to release the original documents of the mortgaged properties in favour of the petitioners for sale and deposit of proceeds with the respondent-bank.

2. Bank of Baroda, Panipat Branch and its authorized officer have been arrayed as respondents No.1 and 2 respectively in the writ petition.

3. The petitioner No.1 is a private limited company carrying on the manufacturing, trading and import of woolen blankets and other handloom products at Panipat. Petitioner No.2 is the Director of the

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Company.

4. Petitioner No.1 availed cash credit limit and a term loan from respondent-bank. In order to secure the loan, thirteen properties belonging to family members of the petitioners were mortgaged with the respondent-bank. On failure to repay the loan amount, the account was declared as Non-Performing Asset (N.P.A.). A notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act') was issued on 19.12.2012. Thereafter, notice under Section 13(4) of the SARFAESI Act was issued. As per notices, outstanding amount was ₹39,34,54,056.03.

5. On receipt of notice under Section 13(4) of the SARFAESI Act, petitioner No.1 filed proceedings under the SARFAESI Act. During pendency of the proceedings, petitioners submitted an offer of settlement to the respondent-bank. The respondent-bank accepted the offer of settlement vide its letter dated 02.12.2015. In pursuance to the settlement, petitioners deposited certain amounts but inspite of being granted extensions, terms of settlement were not honoured. During all this, four secured properties were sold and sale proceeds were deposited with the respondent-bank. The respondent-bank vide letter dated 25.09.2017 requested the petitioners to deposit ₹10.67 crores alongwith interest as per the O.T.S. proposal. The amount was required to be deposited by 31.12.2017. The petitioners deposited ₹1 crore in January 2018. Petitioner No.1, vide letters dated 29.12.2017 and 09.01.2018, made a request for further relief in the O.T.S. The respondent-Bank, vide letter dated 22.03.2018 replied that

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the earlier time schedule for payment was not complied with, yet the validity of O.T.S. was extended upto 31.03.2018, on the same terms and conditions as settled earlier. Now, the petitioner No.1 was required to deposit ₹2 crores by 28.02.2018 and the balance outstanding amount plus interest for the delayed period latest by 31.03.2018. The petitioners accepted the terms & conditions and agreed to deposit ₹1 crore by 31.01.2018, ₹2 crores by 28.02.2018 and balance amount latest by 31.03.2018. Inspite of the fact that petitioners had not adhered to the extension granted and failed to deposit ₹2 crores by 28.02.2018, the bank requested the petitioners to deposit the entire balance amount by 31.03.2018.

6. At this juncture the writ petition has been filed.

7. On 18.04.2018, learned counsel for the petitioners made an offer before this Court that the petitioners will bring a buyer who will enter into a tripartite agreement with the bank and would pay the balance amount in a time bound manner.

8. Notice of motion was issued. The petitioners were directed to bring a buyer before the respondent-Bank within a week failing which the physical possession of the mortgaged properties would be handed over to the respondent-bank peacefully.

9. The order dated 18.04.2018 is reproduced below:-

> "*At the outset, counsel for the petitioners states that they will bring a buyer who is willing to enter into tripartite agreement with the bank so as to pay the balance settled amount in a time bound manner.*
>
> *Notice of motion for 30.04.2018.*
>
> *Mr.C.S.Pasricha, Advocate for Mr.G.S.Anand,*

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Advocate, accepts notice on behalf of the respondents.

Let two copies of the writ petition be handed-over to him during the course of day.

Let the petitioners bring such a buyer before the respondent-bank within one week from today, failing which the petitioners would be required to hand-over peaceful physical possession of the mortgaged property to the respondent-bank.

Status-quo re: possession of the property be maintained till the next date of hearing."

10. The petitioners failed to bring any buyer before the respondent-bank. On 30.04.2018, the respondent-bank produced details of mortgaged properties alongwith valuation. The petitioners were directed to bring the buyer in Court who would give undertaking regarding payment of entire sale consideration to the respondent-Bank within a period of 90 days.

11. On 12.07.2018, the petitioners produced one prospective buyer with respect of one property out of six properties. The prospective buyer was directed to remain present in the Court on the next date of hearing. On the next date, the case was adjourned on the request of learned counsel for the petitioners. On 07.08.2018, list of unsold properties alongwith valuation by respondent-bank was taken on record.

12. Learned counsel for the petitioners contended that respondent-bank should accord reasonable time to the petitioners for making payment of balance outstanding amount as per O.T.S.

13. From perusal of facts of the case, it is apparent that the contention raised on behalf of the petitioners lacks *bonafide.* The petitioners were defaulter of ₹50,36,15,328/- since February 2014. The

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respondent-bank filed O.A. No. 80 of 2014 before Debts Recovery Tribunal-I, Chandigarh (for short 'D.R.T.'). The same was allowed vide order dated 25.07.2017 and recovery certificate was issued. Thereafter, petitioners filed S.A. No. 678 of 2017 and the same was dismissed as withdrawn vide order dated 20.11.2017. O.T.S. of the petitioners was accepted by the respondent-bank vide letter dated 02.12.2015. Even after seeking various extensions, the petitioners did not adhere to the terms of O.T.S. On 25.09.2017, amount of ₹10.67 crores was due. The respondent-bank was graceful enough to re-schedule the payments, vide letter dated 17.01.2018. As per the said modified terms, a sum of ₹1 crore was to be deposited by 31.01.2018; another sum of ₹2 crores by 28.02.2018 and the balance amount including interest on delayed period before 31.03.2018. The petitioners again flouted the terms & conditions. A request was made by the petitioners for further relief. Respondent-bank, vide letter dated 22.03.2018, inspite of the fact that the terms & conditions of OTS and the extension granted were flouted by the petitioners, still gave an opportunity to the petitioners to pay the entire outstanding amount as per OTS alongwith interest upto 31.03.2018.

14. At this juncture, it is important to note that in terms of the settlement, the petitioners were required to pay ₹39.70 crores instead of due amount of ₹55.51 crores. Inspite of having the benefit of ₹15.81 crores, the entire endeavour of the petitioners has been to prolong the matter rather than to settle the accounts. On 18.04.2018, before this Court, a statement was made to bring a buyer of the secured properties who would pay the remaining settled amount in a

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time bound manner. Inspite of the directions of this Court, no buyer was produced before the bank. Thereafter, direction was issued that interested buyer should be brought in Court who would give an undertaking regarding payment of entire sale consideration to clear the outstanding amount.

15. On 12.07.2018, one buyer with respect to one property was present in the Court, he was not in a position to give any undertaking with regard to clearing the entire balance amount in a time bound manner. At this stage, counsel for the petitioners contended that the documents of the properties should be released in favour of the petitioners so that they can sell properties and deposit the sale proceeds with respondent-bank. Conduct of the petitioners throughout has not been *bonafide*. The petitioners have not complied with even one of the commitments made by them to the bank. Even the statement made before this Court was scorned.

16. No case is made out for interference in exercise of the writ jurisdiction by this Court under Article 226 of the Constitution of India.

17. The writ petition is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

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

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