IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.40 of 2019
Decided on : 06.02.2019

Ganga Ram ...... Petitioner

Versus

M/s AU Small Finance Bank and ors. ...... Respondents

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

Present : Mr. Vaibhav Parashar, Advocate
for the petitioner.

Mr. Nitin Thatai, Advocate
for respondents No.1 and 2.

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Manjari Nehru Kaul, J.

Prayer in the instant writ petition filed under Articles 226/227 of the Constitution of India is for issuance of writ in the nature of Certiorari for quashing the impugned order dated 31.12.2018 (Annexure P-8) passed by respondent No.3 for taking over the possession of the property of the petitioner.

2. Petitioner, a businessman, had raised two loans amounting to ₹ 11 lakhs and ₹ 10 lakhs from the respondent-bank for running his business in the year 2015. The said credit facilities were secured by mortgaging the following property:

> *"Old No.-73/1, New No.-94, Near Shiv Mandir Rajwara, Sihi Gate, Ballabgarh, District Faridabad, Haryana admeasuring 124 sq. yards."*

3. According to the petitioner, he regularly paid the monthly

installments till December, 2016. But thereafter due to his family circumstances and recession in the market, he could not maintain financial discipline and consequently his loan accounts were classified as Non-Performing Asset on 07.10.2016 and 06.02.2017 respectively. The respondent-bank issued separate notices dated 03.06.2017 (Annexure P-1 and P-2) under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the Act') asking the petitioner to make payment of ₹ 14,05,161/- and ₹11,84,001/- respectively as was due on 26.05.2017. Thereafter, respondent-bank initiated the action under Section 14 of the Act by moving an application before District Magistrate, Faridabad for taking possession of the mortgaged property. Vide order dated 27.03.2018 District Magistrate, Faridabad appointed the concerned Tehsildar to get the physical possession of the mortgaged property. However, the petitioner without approaching the bank, filed CWP No.29524 of 2018, which was dismissed on the ground of lack of bonafides vide order dated 22.11.2018. Thereafter, the petitioner approached the respondent-bank on 28.11.2018 with a draft of ₹ 8 lakhs for granting some time to settle his loan accounts. In the meantime, vide order dated 31.12.2018 (Annexure P-8) concerned Tehsildar fixed the date i.e. 08.01.2019 for taking the physical possession of the mortgaged property. Feeling aggrieved, the present writ petition has been filed.

4. Vide order dated 08.01.2019, notice of motion was issued in the following terms:

"The petitioner has approached this Court by way

of present writ petition under Articles 226/227 of the Constitution of India seeking quashing of impugned order dated 31.12.2018 (Annexure P-8) passed by respondent No.3 for taking over the possession of the property.

The petitioner had earlier approached this Court by way of filing CWP No.29524 of 2018 for quashing of the letter dated 31.10.2018 which is appended as Annexure P-5 issued by respondent No.1 for execution of order dated 27.03.2018 passed by the District Magistrate, Faridabad under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act'). However, the said writ petition was dismissed on 22.11.2018 with the observations that after December 2016, the petitioner had not paid any installment and had not even approached the bank, therefore, the bonafides of the petitioner were lacking.

The petitioner thereafter approached the respondent-Bank on 28.11.2018 with a draft of ₹8 lacs bearing No.252717 dated 28.11.2018 drawn on Oriental Bank of Commerce to show the bonafides and for discharging the outstanding installments payable by the petitioner after December, 2016. Reliance was placed upon Annexure P-7 by learned counsel for the petitioner for the said averment. It was stated that the draft which was presented to the bank was not accepted.

Learned counsel for the petitioner inter alia submitted that the petitioner had availed two loans, one of ₹10 lacs having loan account No. 160363147 and another loan of ₹11 lacs with account No.160363150. Both the loans were taken in October 2015 for a period of 10 years each with the monthly installment of

₹18,667/- and ₹20,534/- respectively. On that basis, the petitioner has submitted the calculation of the total outstanding installments till 31.12.2018 amounting to ₹9,47,000/-.

Against the outstanding installments of ₹9,47,000/-, learned counsel for the petitioner has produced two demand drafts bearing Nos.252787 dated 07.01.2019 for ₹1.5 lacs & No. 252717 dated 28.11.2018 for ₹8 lacs and urged that the petitioner in a bonafide manner is interested in regularizing both the loan accounts. Photocopy of the demand drafts is retained on record. It was further submitted by learned counsel for the petitioner to establish the genuineness of the petitioner in discharging the outstanding installments, 3 monthly installments shall also be paid in advance.

Notice of motion for respondents No.1 and 2 only at this stage for 16.01.2019.

Notice re: stay.

Mr. Nitin Thatai, Advocate who is present in Court accepts notice on behalf of respondent-bank and submitted that due amount as calculated by the petitioner amounting to ₹9,47,000/- till 31.12.2018 is not correct and according to the bank, installments for a total amount of ₹11,32,000/- are due. However, the originals of the demand drafts have been handed over to the learned counsel for respondents No.1 and 2 who has accepted the same and the respondent-bank shall encash them without prejudice to its rights in the pending writ petition.

Learned counsel for respondents No.1 and 2 further prayed for time to furnish calculation of ₹11,32,000/- in Court on the adjourned date.

In the meantime, status quo be maintained till the *next date of hearing."*

5. Learned counsel for the petitioner submitted that the petitioner is ready and willing to clear the outstanding dues or to regularize his accounts within a reasonable period.

6. After hearing learned counsel for the parties, perusing the petition and without expressing any opinion on the merits of the case, the present writ petition is disposed of with the following directions:

1. The petitioner shall approach the respondent-bank within 15 days from today by filing a detailed and comprehensive representation for clearing the outstanding dues or to regularize the loan accounts.
2. Respondent-bank shall consider the representation submitted by the petitioner sympathetically in accordance with law, after affording an opportunity of hearing to the petitioner and pass a speaking order.
3. The decision on the representation shall be taken at the earliest by the respondent-bank but not later than one month from the receipt of such representation.
4. It is clarified that in case the petitioner fails to submit his representation within the specified time, the respondent-bank would be at liberty to proceed in accordance with law.

7. Meanwhile, the interim protection granted by this Court vide order dated 08.01.2019 shall be maintained till a decision is taken by the respondent-bank on the representation submitted by the petitioner. However, it is clarified that the interim protection shall not be construed as

an expression of opinion on the merits of the case by this Court.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

06.02.2019
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No