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

CWP No.658 of 2019
Decided on : 07.02.2019

Mohd. Shahid and another ...... Petitioners

Versus

IIFL Home Loan and others ...... Respondents

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

Present : Mr. Pankaj Kaushik, Advocate for
Ms. Sheena Khanna, Advocate
for the petitioners.

Mr. Vineet Sehgal, Advocate
for respondents No.1 to 3.

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Manjari Nehru Kaul, J.

Learned counsel for the petitioners has pointed out that in the order dated 16.01.2019, demand draft No.567121 dated 14.01.2019 amounting to ₹ 1.50 lakhs had been recorded as ₹ 50,000/- in place of ₹ 1.50 lakhs.

Accordingly, it is directed that amount of ₹ 50,000/- be read as ₹ 1.50 lakhs in the order dated 16.01.2019.

The instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of writ in the nature of Certiorari for quashing the impugned order dated 19.12.2018 (Annexure P-6) passed by Addl. District Magistrate vide which the auction of the mortgaged property had been scheduled to be held on 28.12.2018 and then extended to 11.01.2019.

2. Petitioners had availed two loans i.e. home loan amounting to

₹ 13.20 lakhs and another loan amounting to ₹ 18.80 lakhs from the respondent-bank in October, 2014. The said credit facilities were secured by mortgaging the following property:

> *"Flat No.23, Block-C, 6th Floor, Silver Oak Apartment, Basti Sheikh, Nakodar Road, Jalandhar."*

3. According to the petitioners, they regularly paid the monthly installment till September, 2018. Thereafter, petitioner No.1 met with an accident as a result of which he suffered serious injuries including fractures. Due to his medical condition and recession in the market, petitioners were unable to discharge their financial liability and consequently their loan accounts were classified as Non-Performing Assets. The respondent-bank issued notice dated 21.04.2018 (Annexure P-3) 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 petitioners to make payments of ₹ 13,39,789/- and ₹18,97,404/- respectively as was due on 20.04.2018. Thereafter, respondent-bank issued possession notice dated 27.06.2018 under Section 13(4) of the Act to the petitioners. The respondent-bank also communicated the One Time Settlement Scheme (Annexure P-5) to the petitioners for settlement of their loan accounts. Thereafter, respondent-bank initiated action under Section 14 of the Act by moving an application before the Addl. Deputy Commissioner-cum-Addl. Deputy Magistrate, Jalandhar on 19.12.2018 for taking possession of the mortgaged property. Vide order dated 20.12.2018, Addl. District Magistrate, Jalandhar intimated the petitioners regarding the schedule of the auction of the mortgaged property. Feeling aggrieved, the present writ

petition has been filed.

4. Vide order dated 16.01.2019, notice of motion was issued in the following terms:

> *"Learned counsel for the petitioners inter-alia submitted that the petitioners are prepared to discharge the outstanding liabilities of loan amount in installments in due course. In order to show the bonafides, learned counsel for the petitioners has produced a demand draft No.567121 dated 14.1.2019 for ₹ 50,000/- in Court today on account of part payment towards the outstanding liability. The aforesaid original demand draft has been handed over to learned counsel for the petitioners to present the same with the respondent-Bank within seven days. The respondent-Bank shall encash the said demand draft, without prejudice to its rights in the writ petition. The photocopy of the said demand draft has been retained on record.*
>
> *Notice of motion to the respondents for 7.2.019.*
>
> *Process dasti only.*
>
> *Status quo shall be maintained till the next date of hearing."*

5. Learned counsel for the petitioners submitted that the petitioners are ready and willing to clear the outstanding dues or to regularize their 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 petitioners shall approach the respondent-bank within one month from today by filing a detailed and

comprehensive representation for clearing the outstanding dues or to regularize the loan accounts.

2. The petitioners shall deposit a draft amounting to ₹ 1.5 lakhs along with the representation.
3. Respondent-bank shall consider the representation submitted by the petitioners sympathetically in accordance with law, after affording an opportunity of hearing to the petitioners and pass a speaking order.
4. The decision on the representation shall be taken at the earliest by the respondent-bank but not later than two months from the receipt of such representation.
5. It is clarified that in case the petitioners either fail to submit their representation or fail to deposit the draft of ₹ 1.5 lakhs 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 16.01.2019 shall be maintained till the 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

07.02.2019
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No