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

CWP No.2370 of 2019
Decided on : 14.02.2019

Sudha Sharma & anr. ...... Petitioners

Versus

Oriental Bank of Commerce & ors. ...... Respondents

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

Present : Mr. Deepak Sonak, Advocate
for the petitioners.

Mr. Harsh Garg, Advocate and
Mr. Pulkit Goyal, Advocate
for respondent No.1.

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Manjari Nehru Kaul, J.

Reply filed on behalf of respondents No.1 and 2 in Court today is taken on record subject to all just exceptions. Copy thereof has also been furnished. Office to tag the same at appropriate place.

Prayer in the present writ petition filed under Articles 226/227 of the Constitution of India is for issuance of writ in the nature of Certiorari for setting aside the order dated 04.01.2019 (Annexure P-5) passed by District Magistrate, Mohali.

2. The case in brief is that the petitioners had availed a housing loan amounting to ₹ 22 lakhs from the respondent-bank on 16.09.2015, which was to be repaid in 300 monthly installments of ₹ 19,440/- each. The said loan was availed by mortgaging the following property:

"Flat No.4-C (2 BHK), 3rd floor in Block 2 Tower No.10 in Savitri Green II at Ghazipur Chd. Ambala

Highway Zirakpur measuring 956 sq. feet."

3. According to the petitioners, they had been paying the monthly installments till August, 2017. Thereafter, due to loss of employment of petitioner No.1, the petitioners were unable to discharge their financial liability and their loan account was declared as Non-Performing Asset on 29.11.2017 by the respondent-bank. The respondent-bank issued notice dated 21.12.2017 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and of Security Interest Act, 2002 (for brevity 'the Act') and asked the petitioners to make payment of ₹ 22,23,395/- as was due on 30.11.2017. Thereafter, respondent-bank issued possession notice dated 16.03.2018 under Section 13(4) of the Act and took the symbolic possession of the mortgaged property in question. The respondent-bank on 07.07.2018 initiated the proceedings under Section 14 of the Act by moving an application before District Magistrate, Mohali. Vide order dated 04.01.2019 (Annexure P-5), District Magistrate, Mohali directed the concerned Tehsildar to take the physical possession of the property in question. The bank also gave a public notice on 19.01.2019 (Annexure P-6) in that regard. Thereafter, petitioners deposited an amount of ₹ 30,000/- with the respondent-bank on 21.01.2019 (Annexure P-7) and approached the Executive Director of the bank by way of representation on 24.01.2019 (Annexure P-8) but to no avail. Hence, the present petition has been filed.

4. Vide order dated 28.01.2019, notice of motion was issued in the following terms:

> "*Petitioner No.2 appeared in person and submitted that an amount of ₹ 30,000/- had been*

deposited with the respondent-Bank towards the outstanding installments on 21.1.2019 vide Annexure P-7. It was, however, submitted that the remaining outstanding installments shall be cleared in due course. It was further stated that another sum of ₹ 25,000/- shall be deposited on or before 4.2.2019 to show the bonafides of the petitioners.

Notice of motion to the respondents for 14.2.2019.

Notice re: stay.

Process dasti only.

Status quo shall be maintained till the next date of hearing.

A copy of the order be given dasti to petitioner No.2 under the signatures of Bench Secretary of this Court."

5. Learned counsel for the petitioners submitted that they are ready and willing to clear the outstanding dues or to regularize their account within a reasonable period.

6. Learned counsel for the respondent-bank submitted that in case a reasonable proposal is made by the petitioners, the respondent-Bank shall consider the same.

7. 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 their loan account.
2. The petitioners shall deposit a draft amounting to ₹ 1 lakh

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 fail to submit their representation or fail to deposit the draft of ₹ 1 lakh within the specified time, the respondent-bank would be at liberty to proceed in accordance with law.

8. Meanwhile, the interim protection granted by this Court vide order dated 28.01.2019 shall be maintained till a decision is taken by the respondent-bank on the representation submitted by the petitioners. 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

14.02.2019
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No