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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3472 of 2019 (O&M)
Date of decision: September 03, 2019

Allahabad Bank …Petitioner

Versus

State of Haryana and others ...Respondents

Coram: Hon’ble Mr. Justice Rakesh Kumar Jain
Hon'ble Mr. Justice Arun Kumar Tyagi

Present: Ms. Manjari Joshi, Advocate,
for the petitioner.

Mr. P.P.Chahar, DAG, Haryana.

Mr. R.S.Redhu, Advocate,
for respondent no.5 to 8.

Mr. Sudhir Aggarwal, Advocate,
for respondent no.9.

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Rakesh Kumar Jain, J.

This petition is filed by the bank for seeking a writ in the nature of *mandamus*, directing respondents no.2 to 4 to implement the order dated 08.08.2018 passed by the District Magistrate, Kurukshetra for the purpose of taking physical possession of the mortgaged property(ies).

In brief, the petitioner has averred that respondent no.5 was sanctioned a term loan of ₹500 lacs on 04.10.2013. It was followed by another loan of ₹150 lacs sanctioned on 27.11.2014 and an additional term loan of ₹150 lacs sanctioned on 21.05.2015. Respondents no.6 to 8 stood as guarantors in respect of the aforesaid loan transactions and respondent no.5 mortgaged its immovable properties for the purpose of aforesaid credit facilities. Since respondent no.5 defaulted in repayment of interest amount of aforesaid loan, therefore, its loan account was declared NPA on 30.06.2017 and by issuance of a notice dated 04.07.2017 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "Act"), the loan amount was recalled and the proceedings were initiated in terms of Section 14 of the Act through the District Magistrate. The application filed by the bank before the District Magistrate for taking physical possession was allowed on 08.08.2018 but so far possession could not be taken and hence, the present petition has been filed.

It is also averred by the petitioner that the borrower has taken refuge to a frivolous litigation which has been initiated at the instance of one Balraj Singh (respondent no.9 herein) who has filed a suit for permanent injunction alleging himself to be a tenant over the mortgaged property from 15.07.2014. In the said suit, an *ad interim* injunction was issued on 09.04.2018 by the Civil Court, which was made absolute vide order dated 14.05.2018. It is alleged that the petitioner-bank has also filed an application under Order 1 Rule 10 CPC for its imleadment in the aforesaid Civil Suit because it was filed only against respondent no.5. The said application is still pending adjudication. It is further submitted that the Civil Court has ordered that respondent no.9 should not be dispossessed, otherwise in due course of law and the petitioner has resorted to the proceedings under the provisions of the Act and it is following the due process of law. It is further submitted that Sudesh Rani alias Sudesh Dhanda wife of Rajesh Kumar Dhanda (respondent no.6 herein) had also filed CWP No.6423 of 2018 for regularization of the loan amount, which was disposed of on 15.03.2018 with a direction to consider the request of the petitioner therein as per the bank's policy. It is stated in the petition that respondent no.5 or any partner/proprietor did not come forward to deposit the defaulted amount of ₹2 crores within the time stipulated by this Court in CWP No.6423 of 2018, therefore, the loan amount could not be regularized.

After notice, the respondents have put in appearance and though all the respondents have filed their respective replies but the petition is mainly contested by respondents no.5 to 8 and 9. Counsel for respondents no.5 to 8 has submitted that offer of the OTS was made, whereas in the replication, it has been specifically denied by the bank. It is submitted that an application though was made on 13.03.2019, which has already been rejected on 14.03.2019. Insofar as respondent no.9 is concerned, he has submitted that he, being the tenant over the property in dispute, could not be dispossessed in the proceedings initiated under the Act.

In this regard, learned counsel for the petitioner has submitted that the property was mortgaged earlier than the lease agreement which was allegedly executed on 15.07.2014, in which no period has been mentioned, and the said lease, after the expiry of 11 months, has not been renewed and has allegedly continued without any registration. It is also submitted by the petitioner that the borrower did not take consent of the bank before allegedly putting the property in question on rent and has, thus, cheated the bank. In this regard, he has referred to Section 17(4-A) of the Act, which has been inserted in Section 17 of the Act by way of an amendment, and has relied upon a judgment of this Court rendered in the case of **HDFC Bank Ltd. vs. District Magistrate and others,** CWP No.19554 of 2018, decided on 10.07.2019. It is further submitted that respondent no.9 has not approached the DRT for seeking adjudication upon his right of tenancy and the suit is filed only to protect his possession by way of permanent injunction against his landlord/respondent no.6 would not debar the petitioner to take possession of the mortgaged property.

After hearing learned counsel for the parties and examining the available record, we are of the considered opinion that there is merit in this petition for the purpose of issuance of a direction, as prayed for. From the sequence of events, it appears that respondent no.6 to 8 have miserably failed to pay the dues of the bank. They had filed the writ petition through the wife of respondent no.6, in which she has alleged that she was inducted as partner to the extent of 25% but without issuing any notice under Section 13 of the Act, the bank has taken measures against other two partners for recovery of the outstanding loan amount. The said writ petition was disposed of with a direction that she would approach the bank within a period of one week and shall deposit 50% of the defaulted amount along with an offer. She did not comply with the directions issued by this Court in the order dated 15.03.2018 passed in CWP No.6423 of 2018 as she did not deposit 50% of the defaulted amount of ₹2 crores upto 30.03.2018. Not only that respondent no.6 has failed on that front, he also tried to stall the delivery of actual physical possession by projecting respondent no.9 as a tenant over the mortgaged property who had been allegedly inducted through a rent agreement dated 15.07.2014. It has also been brought on record that the respondents did not obtain any permission of the petitioner-bank before inducting the tenant or creating a lien insofar as possession is concerned.

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Thus, in view of the judgment relied upon by the petitioner in **HDFC Bank Ltd.'s case (supra),** in which reliance has been placed on a judgment of the Division Bench rendered by this Court in the case of **M/s Padam Motors Pvt. Ltd. v. District Magistrate-cum-Deputy Commissioner and others,** CWP No.6691 of 2015, decided on 28.04.2015, in which this Court has held that this type of suits have to be ignored for the purpose of delivery of possession to the bank/secured creditor. Interestingly, respondent no.9 has also not filed a suit for declaration that he is a tenant over the property in dispute and all that he has been seeking is a decree for permanent injunction to protect his possession. If respondent no.9 was a tenant over the property in dispute, as alleged, he should have filed a proper application before the DRT because DRT has the jurisdiction to decide the same but knowing full well this fact, the suit was restricted to permanent injunction and no effort was thereafter made by respondent no.9 to file the suit/application in terms of Section 17(4-A) of the Act for declaring himself a tenant over the property in question before the DRT.

No other point has been raised.

In view of the above, the present petition is hereby allowed and a direction is issued to respondents no.2 to 4 to implement the order of the District Magistrate dated 08.08.2018 within a period of 15 days from today.

(Rakesh Kumar Jain)
Judge

September 03, 2019 **(Arun Kumar Tyagi)**
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Whether speaking / reasoned	:	Yes/No
Whether reportable	:	Yes/No