IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6278 of 2019
Decided on : 08.03.2019

M/s Gian Di Hatti & ors. ...... Petitioners

Versus

State Bank of India & ors. ...... Respondents

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

Present : Mr. Iqbal Singh Ratta, Advocate
for the petitioners.

****

Manjari Nehru Kaul, J.

Prayer in the present writ petition filed under Articles 226/227 of the Constitution of India is *inter alia* for issuance of writ in the nature of Mandamus directing the respondents to accept the offer of petitioner No.1 for settlement of Cash Credit Loan Account in terms of SBI OTS SME, RINN SAMADHAN 18-19 Scheme(for brevity 'OTS Scheme').

2. The petitioner-firm had earlier approached this Court by filing CWP No.4833 of 2019 with a prayer for issuance of direction to respondent -bank to accept the offer made by petitioner No.1 in terms of OTS Scheme and further to allow the petitioners to liquidate the dues of the Cash Credit Loan account in terms of OTS Scheme. Vide order dated 25.02.2018, this Court dismissed the petition as withdrawn with liberty to the petitioners to file fresh one on the same cause of action with better particulars.

3. According to the petitioners, they had availed the Cash Credit facility of ₹ 8 lakhs from the respondent-bank in the year 2005 against the

security of two equitable immovable properties, which are as under:

> *i) Shop measuring 33.33 sq. yards situated at Main Bazar (old) Sherpur vide sale deed No.984 dated 27.07.2005 in favour of Sh.Kesho Ram s/o Hari Chand.*
>
> *ii) Plot measuring 750 sq. ft. situated at Pakki Gali, Sherpur vide sale deed No.1350 dated 19.10.2005 in favour of Sh.Kesho Ram s/o Hari Chand.*

4. The petitioners had been regularly paying the monthly installments upto the year 2010 but thereafter due to unavoidable circumstances, they could not maintain the financial discipline. However, the respondent-bank on 31.01.2009 declared their loan account as Non Performing Asset and initiated proceedings under Securitisation and Reconstruction of Financial Assets and of Security Interest Act, 2002 (in short 'the Act') which culminated in issuance of possession notice dated 21.12.2012 (Annexure P-8) for taking physical possession of the mortgaged property. The petitioner approached Debts Recovery Tribunal, Chandigarh (for short 'the Tribunal') against the said order by way of filing SA No.156 of 2013. The Tribunal vide order dated 16.01.2018 (Annexure P-4) allowed the application while granting liberty to the bank to take action under Section 13(4) of the Act in accordance with law. Thereafter, the respondent-bank again issued possession notice dated 09.05.2018 (Annexure P-5) and moved an application on 16.07.2018 under Section 14 of the Act before District Magistrate, Sangrur for taking possession of the secured assets. Meanwhile, the bank floated the OTS Scheme for which the petitioner-firm vide letter dated 04.09.2018 (Annexure P-8) had showed its

willingness but till date no action has been taken by the respondent-bank. Feeling aggrieved, the present petition has been filed.

5. Learned counsel for the petitioners submitted that the petitioners had already declared their intent to avail the benefit of the OTS Scheme yet vide order dated 11.10.2018, District Magistrate directed Tehsildar, Dhuri to take possession of the mortgaged properties. He further submitted that the petitioners are ready and willing to clear the outstanding dues or to regularize its account within a reasonable period.

6. A perusal of the writ petition shows that except for their bald statement there is nothing else on record to show by way of any document that the petitioners had approached the respondent-Bank for discharging their outstanding liability as has been claimed in the present writ petition. There are alternative statutory remedies available to the petitioners under the Act.

7. The Apex Court in *"**United Bank of India Vs. Satyawati Tondon and others (2010) 8 SCC 110**"*, held as under :

> *"It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues."*

8. Accordingly the present petition stands dismissed. It shall,

however, be open to the petitioners to take recourse to the remedies as may be available to them, in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

08.03.2019
sonia

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