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

CWP No.14672 of 2018
Decided on : 18.03.2019

M/s Aggarwal Sweets ...... Petitioner

Versus

Debt Recovery Tribunal-III, Chandigarh & ors. ...... Respondents

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

Present : Mr. Parveen Sharma, Advocate for
Mr. Vishal Goel, Advocate
for the petitioner.

Mr. Vikas Goel, Advocate
for the respondent-bank.

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Manjari Nehru Kaul, J.

The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of writ in the nature of Certiorari for setting aside the order dated 10.05.2018 (Annexure P-5) with further prayer for issuance of direction to respondent No.2 not to initiate any further proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Act').

2. The case of the petitioner is that the petitioner-firm had availed Cash Credit Limit from the respondent-bank in the year 2013 against the collateral security of the property i.e. House No.166, Govind Nagar, Naya Gaon, District Mohali. As per the petitioner, it had been regularly paying the monthly installments till September, 2015 but thereafter due to some compelling medical as well as personal family problems, it could not

maintain its financial discipline as a consequence of which, its loan account was classified as Non Performing Asset. Thereafter, the respondent-bank initiated proceedings under the Act which culminated in possession notice dated 09.03.2016 for taking physical possession of the mortgaged property. Against the said possession notice, the petitioner approached Debts Recovery Tribunal-II, Chandigarh (for short 'the Tribunal') by filing SA No.145 of 2016, which was disposed of vide order dated 17.11.2016 with a direction to the petitioner to pay ₹ 11,28,976.93 along with simple interest @ 11% on reducing balance from 01.10.2015 along with costs of ₹ 10,000/- on or before 15.03.2017. The petitioner in compliance of the order dated 17.11.2016 paid the whole amount to the respondent-bank before 15.03.2017 and the respondent-bank issued the zero balance statement to the petitioner in that regard. However, when the petitioner approached the respondent-bank for No Objection Certificate (NOC) and return of the original documents of the secured asset, the bank refused to give the same. Faced with this situation, the petitioner sent a legal notice dated 11.03.2017 to the respondent-bank but the bank refused to give the documents since the costs imposed by the Tribunal had not been paid. Thereafter, the petitioner immediately paid the costs but despite that the bank did not issue NOC and refused to return the original documents of the secured asset. Feeling aggrieved, the petitioner filed MA No.175 of 2017 before the Tribunal. It was only during the pendency of aforementioned MA the respondent-bank while filing reply contended that the petitioner had not paid the interest amount i.e. ₹ 52,849/-in terms of order dated 17.11.2016. The Tribunal vide order dated 10.05.2018 (Annexure P-5) dismissed the MA on account of non-payment of the interest amount. Aggrieved against the said order, the petitioner filed the present petition.

4. Vide order dated 31.05.2018, while issuing notice of motion this Court granted interim protection to the petitioner subject to the payment of ₹ 52,849/-.

5. Learned counsel for the petitioner submitted that the petitioner is ready and willing to clear the outstanding dues i.e. interest amount within a reasonable period. On the other hand, learned counsel for the bank claimed that besides the above, further amount on account of default in the repayment of car loan is to be cleared by the petitioner.

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 the receipt of certified copy of this order by filing a detailed and comprehensive representation for clearing the outstanding dues or to regularize the loan account(s).
2. The petitioner shall deposit a draft amounting to ₹ 2 lakhs along with the representation.
3. 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.
4. 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.

5. It is clarified that in case the petitioner fails to submit its representation or fails to deposit the draft of ₹ 2 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 31.05.2018 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

18.03.2019
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No