IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.15598 of 2018
Decided on : 16.01.2019

M/s Aashirwad Gardens & anr. ...... Petitioners

Versus

Punjab and Sind Bank and anr. ...... Respondents

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

Present : Mr. Ashok Gupta, Advocate
for the petitioners.

Mr. H.K.L.Talwar, Advocate
for the respondents.

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Manjari Nehru Kaul, J.

1. Prayer in the instant petition filed under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of Certiorari for quashing the impugned notice dated 11.06.2018 (Annexure P-5) vide which the physical possession of the mortgaged property was to be taken within a period of ten days.

2. The petitioners had applied for a credit facility amounting to ₹ 1.60 crores from the respondent-bank for running their business of Marriage Palace in the year 2013. The said loan was sanctioned against the following properties:

i) Mortgage of building and structure along with interior, facade constructed or to be constructed in future.

ii) Hypothecation of business assets including genset, air condition, fire fighting equipments, crockery, furniture etc. installed/purchased or to be installed/purchased in future.

3. According to the petitioners, due to financial losses in the year 2015 they could not pay the installments in time and loan account was classified as Non-Performing Asset (NPA) on 30.06.2015. The bank issued a notice dated 28.08.2015 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as 'the Act') and asked the petitioners to make payment of ₹ 1,65,44,290/- as on 22.08.2015. Thereafter, respondent-bank issued possession notice dated 01.05.2017 under Section 13(4) of the Act whereby symbolic possession of the mortgaged property was taken. However, petitioner No.1 through its partner made a representation before Duty Magistrate and made a payment of ₹ 18 lakhs with an assurance to regularise its account. But loan account was again classified as NPA on 04.02.2016, pursuant to which the respondent-bank issued possession notice dated 11.06.2018 (Annexure P-5) under Section 13(4) of the Act to the petitioners. Feeling aggrieved, the petitioners filed the present writ petition.

4. This Court vide order dated 20.07.2018 issued notice of motion in the following terms:

> *"Learned counsel for the petitioners has produced a Bankers Cheque No.110381 dated 19.07.2018 drawn in favour of the respondent- Bank for an amount of Rs.5 lakhs to show the bona fides of the petitioners. The Bankers Cheque in original has been returned to the learned counsel for the petitioners with a direction to deposit the same with the respondent –Bank on or before 23.07.2018. The bank shall accept the Bankers Cheque without prejudice to its right. However, photocopy of the Bankers Cheque is taken on record, subject to all just exceptions. Office to tag the same at the appropriate place.*

According to learned counsel for the petitioners, the outstanding liability is approximately Rs.3 lakhs, which would also be discharged in due course.

Notice of motion to the respondents for 14.08.2018.

Notice re:stay as well.

Process dasti only.

In the meantime, status quo be maintained.

It is, however, made clear that it shall be the responsibility of the petitioners to serve the respondents, failing which the interim order shall stand vacated."

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. 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.

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 ₹ 6 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 ₹ 6 lakhs within the specified time, the respondent-bank would be at liberty to proceed in accordance with law.

7. The interim protection granted by this Court vide order dated 20.07.2018 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

16.01.2019
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No