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

CWP No.21794 of 2018
Decided on : 14.02.2019

Manjeet Singh ...... Petitioner

Versus

M/s Shubham Housing Development Finance
Co. Pvt. Ltd. & ors. ...... Respondents

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

Present : Mr. A.S.Barnala, Advocate for
Mr. A.S.Bhatti, Advocate
for the petitioner.

Mr. Rajeev Sagar, Advocate
for respondents No.1 and 2.

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Manjari Nehru Kaul, J.

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 quashing the possession order dated 09.08.2018 (Annexure P-3) issued by respondent No.3-Addl. District Magistrate, Ludhiana.

2. Brief facts of the case are that the respondent-company had sanctioned a home loan (Demolish Rebuilding) amounting to ₹ 10 lakhs to the petitioner on 31.01.2015. The said loan was to be repaid in 180 months in monthly installments of ₹ 16,105/-. The said loan was sanctioned against the following property:

> *"residential house in Street No.3, Manoj Colony, Jassrian Road, Ludhiana"*

3. According to the petitioner, he had been regularly paying the

monthly installments till August, 2015. But thereafter due to his health problem, he was unable to discharge his financial liability in time. As per Account Statement (Annexure P-2), he deposited ₹4,63,000/- till 17.01.2018 and the remaining outstanding was ₹12,07,000/-. The petitioner further submitted that he was not aware about the proceedings initiated under Securitisation and Reconstruction of Financial Assets and of Security Interest Act, 2002 (in short 'the Act') by the respondent-company and came to know only when the respondent-company moved an application before Addl. District Magistrate, Ludhiana under Section 14 of the Act for taking physical possession of the mortgaged property. Vide order dated 09.08.2018 (Annexure P-3), Addl. District Magistrate, Ludhiana granted the police protection to respondents No.1 and 2 for taking the physical possession of the property in question. Feeling aggrieved, the present petition has been filed.

4. Vide order dated 30.08.2018, notice of motion was issued in the following terms:

> *"Learned counsel for the petitioner has produced the original receipt bearing No.232768 dated 31.01.2018 amounting to ₹ 49,320/- and a demand draft bearing No.000697 dated 21.08.2018 amounting to ₹ 2 lakhs to show the bonafides of the petitioner and urged that on payment of the aforesaid amount, the account would stand cleared. The original demand draft has been returned to the learned counsel for the petitioners with a direction to deposit the same with respondent No.1 within a period of seven days from today. It is, however, clarified that respondent No.1 shall accept the demand draft without prejudice to its rights in*

this petition. The photocopy of the demand draft and original receipt of payment are taken on record.

Notice of motion to the respondents for 27.09.2018.

Notice re.: stay also.

Process dasti only.

In the meantime, status quo be maintained."

5. A perusal of the reply filed by respondents No.1 and 2 reveals that the respondent-company vide notice dated 19.09.2016 (Annexure A-2) issued under Section 13(2) of the Act declaring the loan account of the petitioner as Non-Performing Asset asked him to make payments of ₹ 10,48,945/- as was due on 19.09.2016. Thereafter, symbolic possession of the mortgaged property under Section 13(4) of the Act was taken by the respondent-company on 06.12.2016. According to the respondents, the petitioner paid the last installment on 31.01.2018 and therefore, it approached the Addl. District Magistrate, Ludhiana for granting police protection for taking possession of the mortgaged property.

6. Learned counsel for the petitioner submitted that the petitioner is ready and willing to clear the outstanding dues or to regularize his accounts within a reasonable period.

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 petitioner shall approach the respondent-company within one month from today by filing a detailed and comprehensive representation for clearing the outstanding

dues or to regularize the loan account.

2. The petitioner shall deposit a draft amounting to ₹ 1 lakh along with the representation.
3. Respondent-company 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-company but not later than two months from the receipt of such representation.
5. It is clarified that in case the petitioner fails to submit his representation or fails to deposit the draft of ₹ 1 lakh within the specified time, the respondent-company would be at liberty to proceed in accordance with law.

8. Meanwhile, the interim protection granted by this Court vide order dated 30.08.2018 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

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