IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22325 of 2018
Decided on : 14.02.2019

Sharmila ...... Petitioner

Versus

Authorised Officer, Shubham Housing Development Finance Co. & ors. ...... Respondents

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

Present : None 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 impugned order dated 27.07.2018 (Annexure P-3) issued by respondent No.3-District Magistrate, Karnal.

2. The petitioner raised a home loan amounting to ₹ 4,21,467/- from the respondent-company in March, 2015. The said loan was to be repaid in 84 months in monthly installments of ₹10,074/-. The said loan was availed by mortgaging the following property:

> *"Plot situated at Rangia Mandi, Had Nagar Palika, Tehsil & District Karnal."*

3. According to the petitioner, she had been regularly paying the monthly installments till November, 2016. But thereafter her account became irregular on account of heavy expenses incurred on the treatment of

her mother-in-law, who died on 08.01.2017. However, she paid ₹ 1 lakh to the respondent-company and also received some receipts in that regard. Vide order dated 27.07.2018 (Annexure P-3) passed by Duty Magistrate, Karnal a notice under Section 14 of the Securitisation and Reconstruction of Financial Assets and of Security Interest Act, 2002 (in short 'the Act') was issued to the petitioner for taking physical possession of the mortgaged property. Thereafter, petitioner moved a representation dated 20.08.2018 (Annexure P-4) to the respondent-company but all in vain. Feeling aggrieved, the present petition has been filed.

4. Vide order dated 19.09.2018, notice of motion was issued in the following terms:

> *"Learned counsel for the petitioner inter-alia submitted that the petitioner had taken the loan of ₹ 4,21,467/- in the month of March 2015. While taking the loan, the house measuring 22 square yards was mortgaged. It was urged that the petitioner had been paying monthly installments of ₹ 10,074/- per month from April 2015 to November 2016. According to the learned counsel for the petitioner, the default had occurred due to the illness of her mother-in-law who ultimately expired. Relying upon the receipts, Annexure P.2 (colly), it was submitted that besides the aforesaid installments, further sum of ₹ 10,074/-, ₹ 20,000/-, ₹ 10,080/- and ₹ 10,074/- has been deposited. It was also urged that in addition, another amount of ₹ 50,000/- shall be deposited in two months.*
>
> *Notice of motion to the respondents for 26.10.2018.*
>
> *Process dasti only.*

Status quo shall be maintained till the next date of hearing."

5. A perusal of the reply filed by respondents No.1 and 2 reveals that the respondent-bank vide notice dated 29.06.2017 (Annexure A-2) issued under Section 13(2) of the Act whereby loan account of the petitioner was declared Non-Performing Asset and she was asked to make payment of ₹ 4,05,655/- as was due on 29.06.2017. Thereafter, symbolic possession of the mortgaged property under Section 13(4) of the Act was taken by the respondent-company on 27.11.2017 (Annexure A-5). According to the respondents, since the last installment was paid by the petitioner only on 11.01.2017, it approached the District Magistrate, Karnal for granting police protection for taking possession of the mortgaged property.

6. After hearing learned counsel for the respondent, 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. 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.
3. 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.

4. It is clarified that in case the petitioner fails to submit her representation within the specified time, the respondent-company would be at liberty to proceed in accordance with law.

7. Meanwhile, the interim protection granted by this Court vide order dated 19.09.2018 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