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

CWP No.26971 of 2018
Decided on : 08.02.2019

M/s Golden Shoe Palace ...... Petitioner

Versus

State Bank of India and others ...... Respondents

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

Present : Mr. Bhupinder Kumar Gupta, Advocate
for the petitioner.

Mr. Gaurav Goel, Advocate
for the respondents.

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Manjari Nehru Kaul, J.

Prayer in the instant 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 possession notice dated 05.05.2018 (Annexure P-3) and further proceedings for taking over the symbolic possession by the respondent-bank being illegal and arbitrary.

2. Petitioner being a sole proprietorship concern had availed Cash Credit Limit amounting to ₹ 10.50 lakhs from the respondent-bank under MSME Scheme against hypothecation of stocks of Footwear. The petitioner also mortgaged the following property to secure the credit facility:

> *"Residential plot measuring 5 marlas being 05/971 share out of total land measuring 48 kanals 11 marlas comprised in Khewat No.238 rect No.74 killa No.28/3 situated within M.C.limits, Pehowa (Diwan*

colony), Tehsil Pehowa, District Kurukshetra vide jamabandi for the year 2009-10 sale deed No.4560 dated 14.01.2013."

3. According to the petitioner, due to huge losses in the business and recession in the market, it could not maintain the financial discipline and consequently its loan account was classified as Non-Performing Asset on 28.10.2017. The respondent-bank issued notice dated 07.11.2017 (Annexure P-1) under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as 'the Act') asking the petitioner to make payment of ₹ 10,95,540/- plus upto date interest as was due on 31.10.2017. Thereafter, the petitioner approached the bank and deposited an amount of ₹ 30,000/- on 28.12.2017, which was accordingly appropriated towards loan account. After that, the petitioner again could not deposit any amount in the loan account and the respondent-bank issued possession notice dated 05.05.2018 (Annexure P-3) under Section 13(4) of the Act to the petitioner. The respondent-bank approached the District Magistrate, Kurukshetra by moving an application under Section 14 of the Act for taking possession of the mortgaged property. Vide order dated 10.09.2018, District Magistrate, Kurukshetra issued notice to the petitioner regarding the schedule of the auction of the mortgaged property. However, the petitioner through its counsel approached the respondent-bank along with a demand draft amounting to ₹ 1 lakh for regularising its account but the respondent-bank refused to accept the same. Feeling aggrieved with the actions of the respondent-bank, the present writ petition has been filed.

4. Vide order dated 22.10.2018, notice of motion was issued in the following terms:

> *"Learned counsel for the petitioners inter-alia submitted that the petitioner had availed the cash credit limit facility from the respondent-bank. According to the learned counsel, the petitioner is prepared to regularise the said account by clearing the overdue amount. In order to show the bonafides, a photocopy of the demand draft No.006331 dated 20.09.2018 for 1 lakh has been annexed along with the writ petition.*
>
> *Notice of motion to the respondents No.1 and 2 only for 29.10.2018.*
>
> *Notice re: stay.*
>
> *Process dasti only.*
>
> *In the meantime, the petitioner shall present the aforesaid draft to the respondent-bank within seven days who shall encash the demand draft, without prejudice to its rights in the writ petition.*
>
> *At this stage, Mr. Gaurav Goel, Advocate appears on behalf of respondents No.1 and 2 and prays for time to file reply."*

5. Learned counsel for the petitioner submitted that the petitioner is ready and willing to clear the outstanding dues or to regularize its account within a reasonable period.

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 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 ₹ 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 either 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.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

08.02.2019
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No