

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-30408-2018
Decided on: 19.03.2019

Sawinder Singh

..... Petitioner

Versus

Assistant Registrar and others

..... Respondents

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

Present: Mr. Amit Sharma, Advocate
for the petitioner.

Mr. Anhad S. Miglani, Advocate
for respondents No.2 and 3.

MANJARI NEHRU KAUL, J.

The instant writ petition has been preferred under Articles 226/227 of the Constitution of India, inter alia for issuance of a writ in the nature of certiorari for quashing the impugned order dated 22.06.2018 (Annexure P-2) in respect of arrest of the petitioner under Section 69(1) of the Punjab Land Revenue Act, passed by the Assistant Registrar, Cooperative Society, Ajnala, Amritsar-respondent No.1

2. The petitioner availed a housing loan from respondent No.2-bank for an amount of ₹5 lakhs on 21.07.2006, after mortgaging his property with respondent No.2-bank as a security.

3. The petitioner defaulted in discharging his loan liability, as he underwent surgery for a head injury, which left him medically unfit. Resultantly, respondent No.2-bank filed an application before the Court of Assistant Registrar, Cooperative Society, Ajnala, Amritsar-

respondent No.1 for the recovery of loan. Respondent No.1 passed a decree in favour of respondent No.2-bank and the petitioner was ordered to repay the original loan alongwith the interest totalling ₹6,47,093/-. Respondent No.1, while passing the order dated 06.07.2009 (Annexure P-1) specifically observed that even though the petitioner had been duly served, he had not intentionally appeared before him. Respondent No.1 thereafter issued the warrant of arrest of the petitioner dated 22.06.2018 (Annexure P-2) exercising the powers of Assistant Collector 1st Grade under Section 69(1) of the Punjab Land Revenue Act. Feeling aggrieved, the present writ petition has been filed.

4. Vide order dated 04.12.2018, notice of motion was issued in the following terms:-

“ Learned counsel for the petitioner states that the petitioner is prepared to discharge the liability in due course.

However, to show the bonafides of the petitioner, learned counsel for the petitioner has produced a demand draft No. 000129 dated 03.12.2018 of ₹2.50 lacs. A copy of the demand draft has been taken on record and the original has been returned to the learned counsel for the petitioner with a direction that the same be deposited with respondent No.2 within one week. Respondent No. 2 shall be entitled to encash it without prejudice to its rights in the pending writ petition.

Notice of motion for 08.02.2019.

Notice re: stay.

Process dasti only.

In the meantime, operation of impugned order dated 22.06.2018 (Annexure P-2) is stayed till the next date of hearing.”

5. Learned counsel for the petitioner submits that the petitioner is ready and willing to clear the outstanding dues within a reasonable period in a time bound manner.

6. Learned counsel for respondent No.2-bank has submitted that in case a reasonable proposal is made by the petitioner, the respondent No.2-bank shall consider the same.

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 respondent No.2-bank within one month from today by filing a detailed and comprehensive representation for clearing the outstanding dues of the loan account.
2. The petitioner shall deposit a draft amounting to ₹1 lakh alongwith the representation.
3. Respondent No.2-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 respondent No.2-bank 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 within the specified time or fails to deposit a draft of ₹1 lakh, respondent No.2-bank would be at liberty to proceed in accordance with law.

8. Meanwhile, the interim protection granted by this Court vide order dated 04.12.2018 shall be maintained till a decision is taken by respondent No.2-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

19.03.2019

Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No