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

CWP No.422 of 2018
Decided on : 24.01.2019

Bakshish Singh & anr. ...... Petitioners

Versus

District Magistrate and ors. ...... Respondents

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

Present : Ms. Harpreet Kaur, Advocate
for the petitioners.

Mr. Sandeep Suri, Advocate
for respondents No.2 and 3.

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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 order dated 31.10.2017 (Annexure P-14) vide which dispossession orders were passed by the District Magistrate, Gurugram.

2. Brief facts of the case are that the petitioners had raised a housing loan amounting to ₹ 32 lakhs in the year 2011 from Life Insurance Corporation, which was subsequently taken over by respondents No.2 and 3 in the year 2014. Thereafter, in March, 2014 petitioner No.1 had again applied for a personal loan of ₹ 13 lakhs from respondent No.2- bank. Both the loans were secured by mortgaging the following property:

> *"Unit No.B-9/3, 9th floor, Sagar Kunj Cross Ltd. Plot GH-03, Sector 9-A, Gurgaon."*

3. According to the petitioners, personal loan account of petitioner No.1 was declared as Non-Performing Asset (NPA) on 23.02.2016 while home loan account was declared as NPA on 17.05.2016 but the same was never intimated to the petitioners. Electronic Clearing System (ECS) was regularly deducting the installments from the account of petitioner No.1 till January, 2016 without any default on their part. The respondent-bank issued notice dated 21.12.2015 (Annexure P-9) under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Act') asking the petitioners to make payment of ₹ 48,99,975/- as was due on 21.12.2015. A perusal of Annexure B of the said notice revealed that the loan accounts of the petitioners were classified as NPA on 17.11.2014 but the statement of accounts, on the other hand, reflected that the account was healthy and no installment had been defaulted till February, 2016. On the contrary, as per e-mail dated 17.05.2016, home loan account had been classified as NPA as the same had been clubbed with personal loan under Common Borrower Clause of the Bank. Thereafter, respondent No.2 issued notice dated 18.06.2016 under Section 13(4) of the Act for taking symbolic possession of the mortgaged property. Respondent-Bank moved an application under Section 14 of the Act before District Magistrate, Gurgaon for taking possession of the secured assets upon which directions were issued to the respondent-bank to take initial steps to take over the mortgaged property. Hence, the present writ petition has been filed.

4. Vide order dated 11.01.2018, notice of motion was issued in the following terms:

"It is contended, inter-alia, that there has always been sufficient amount lying in three accounts of the petitioners, out of which the due amount of EPF could be deducted by the bank and thus there is no occasion to classify the petitioners' loan accounts as NPA. It is further contended that the 1st petitioner annoyed the bank officials by filing a criminal complaint in respect of forging of his signatures on an insurance policy and thus as a counter-blast thereto, the petitioners' accounts have been declared as NPA.

Notice of motion for 13.03.2018.

Subject to the petitioners' depositing the arrears of due installments within two weeks, status-quo re: possession of the residential house shall be maintained."

5. Learned counsel for the petitioners submitted that the petitioners are ready and willing to clear the outstanding dues or to regularize their account within a reasonable period.

6. Learned counsel for the respondents submitted that in case a reasonable proposal is made by the petitioners, the respondent-Bank shall consider the same.

7. After hearing learned counsel for the petitioners, 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 ₹ 5 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 ₹ 5 lakhs within the specified time, the respondent-bank would be at liberty to proceed in accordance with law.

8. Meanwhile, status quo shall be maintained till a decision is taken by the respondent-bank on the representation submitted by the petitioners. 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

24.01.2019
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No