IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.28832 of 2019
Date of Decision: 04.10.2019

Manjeet Singh

.....Petitioner

Versus

M/s Shubham Housing Development Finance Company Limited and others

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Avtar Singh Bhatti, Advocate for the petitioner.

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ARUN KUMAR TYAGI, J.

The petitioner has prayed for the issuance of a writ in the nature of certiorari for quashing the notice dated 13.09.2019 (Anneuxre P-6) issued for taking possession of the mortgaged residential house under Section 14(1-A) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "the SARFAESI Act").

The petitioner was sanctioned loan of ₹10 lakhs on 30.01.2015 against the mortgage of his residential house. The petitioner paid a sum of ₹4,63,000/- but due to some health problems, he failed to deposit some of the instalments on time. Respondents No.1 and 2 initiated proceedings for taking possession of the mortgaged residential house of the petitioner. On coming to know about the same, the petitioner approached this Court by filing CWP No.21794 of 2018 which was allowed vide order dated 14.02.2019 whereby the petitioner was directed to move a representation to respondent No.1 and to deposit ₹1 lakh within one month while respondent No.1 was directed to consider the representation sympathetically and to dispose of the same by passing a speaking order within a period of two months from the date of receipt of the same.

The petitioner has filed the present writ petition claiming that he had submitted the representation dated 14.03.2019 but respondent No.1 did not pass any speaking order on the same and is bent upon in taking possession of his mortgaged residential house. While pleading his readiness and willingness to settle the loan account, the petitioner has prayed for quashing of the impugned notice being not sustainable in the eyes of law.

We have heard counsel for the petitioner and gone through the record.

Learned counsel for the petitioner has argued that the petitioner is ready and willing to settle the loan account. CWP No.21794 of 2018 filed by the petitioner was allowed by this Court vide order dated 14.02.2019 whereby the petitioner was allowed to make representation and deposit the amount of ₹1 lakh with respondent No.1 within one month and respondent No.1 was directed to dispose of the representation by passing a speaking order within two months thereof. The petitioner made the representation on 14.03.2019 (**Annexure P-5**) enclosing demand draft of an amount of ₹1 lakh with the same but respondent No.1 instead of considering the representation and passing any speaking order on the same is bent upon taking possession of his mortgaged residential house and the action of respondent No.1 being illegal may be quashed.

On due consideration of the submissions made by learned counsel for the petitioner and perusal of the material on record, we are of the considered view that the present writ petition is devoid of any merit and is liable to be dismissed.

The petitioner was disbursed a loan of ₹10 lakhs by respondent No.1 which was returnable by the petitioner in equated monthly instalments of ₹16,105/-. However, the petitioner committed default in payment of the instalments on which proceedings under the SARFAESI Act were initiated against him. The petitioner filed CWP No.21794 of 2018 which was allowed by this Court vide order dated 14.02.2019 and the relevant part thereof is reproduced as under:

> *"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."

Even though the petitioner has claimed that he had made the representation dated 14.03.2019 in accordance with the above said order but in the body of representation dated 14.03.2019 (**Annexure P-5**) the petitioner mentioned that draft No.000787 dated 18.03.2019 of Axis Bank Limited for an amount of ₹1 lakh was enclosed therewith which by itself shows that the petitioner made the representation and offered the amount of ₹1 lakh by demand draft on or after 18.03.2019 after expiry of the period of one month and did not comply with the order dated 14.02.2019 passed by this Court. In view of the default, respondent No.1 was entitled to proceed in accordance with law for taking possession of the mortgaged residential house of the petitioner. In these facts and circumstances of the case, offer of the petitioner to settle his loan account cannot be said to be bonafide and genuine one and the petition has been filed solely with the motive to delay the conclusion of the proceedings under the SARFAESI Act against him. The petition is, therefore, devoid of any merits and the impugned notice is not liable to be set aside.

Accordingly, the writ petition is dismissed with no order as to costs on the petitioner.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

04.10.2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No