IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.40621 of 2018
Decided on : 22.01.2019

Gurbachan Singh Sarari & anr. ...... Petitioners

Versus

State Bank of India and ors. ...... Respondents

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

Present : Mr. Sandeep Arora, Advocate
for the petitioners.

Mr. Gaurav Goel, Advocate
for respondents No.1 and 2.

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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 Prohibition restraining respondents No.1 and 2 from taking any coercive measure pertaining to the residential house of the petitioners i.e. House No.413-A, Paras Estate, Basti Peer Dad Khan, Jalandhar.

2. Petitioners had availed a home loan amounting to ₹22.50 lakhs in the year 2015 in respect of which the monthly installment was ₹ 25,100/-. The said credit facility was secured by mortgaging the following property:

> *"House No.413 situated at Paras Estate, Basti Peer Dad Khan, Jalandhar out of khasra No.45//3/4, 4, 6/2, 7/1, 7/2, 7/3, 7/4, 8, 11/2, 12, 13, 20, 5 measuring 5 M 5 sq. ft. (Each marla = 272 sq. ft.)"*

3. According to the petitioners, they regularly paid the monthly

installments till June, 2016. Due to some financial crisis faced by the petitioners, they were unable to maintain financial discipline and consequently their loan account was classified as Non-Performing Asset. The respondent-bank issued notice dated 03.11.2016 (Annexure P-1) under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the Act') and asked the petitioners to make payment of ₹ 23.85 lakhs as was due on 03.11.2016. Thereafter, respondent-bank issued notice dated 01.05.2018 (Annexure P-2) under Section 13(4) of the Act for taking symbolic possession of the mortgaged property. Vide order dated 25.07.2018 (Annexure P-3) Deputy Commissioner, Jalandhar directed the bank to liaison with the concerned Tehsildar and Police Department for getting the physical possession of the mortgaged property. Feeling aggrieved, the present writ petition has been filed.

4. 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.

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

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 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 of ₹ 1 lakh along with their 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 ₹ 1 lakh within the specified time, the respondent-bank would be at liberty to proceed in accordance with law.

7. Meanwhile, the interim protection granted by this Court vide order dated 07.01.2019 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

22.01.2019
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No