IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.29770 of 2018 (O&M)
Decided on : 01.04.2019

M/s Jagdish Jewellers & ors. ...... Petitioners

Versus

HDFC Bank & anr. ...... Respondents

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

Present : Mr. Mohit Jaggi, Advocate
for the petitioners.

Mr. Abhinav Thapar, Advocate with
Mr. Rohit Pathak, Legal Manager
Indl. Area Branch, Chandigarh.

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Manjari Nehru Kaul, J.

CM-4894-2019

Application is allowed and the reply filed on behalf of respondents No.1 and 2 in Court today is taken on record subject to all just exceptions. Office to tag the same at appropriate place.

Main case

The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of writ in the nature of Certiorari for quashing the impugned possession notice dated 23.10.2018 (Annexure P-2) issued by the respondent-bank.

2. The petitioners had availed a loan of ₹ 25.25 lakhs from the respondent-bank in the year 2012 payable in monthly installment of

₹ 37,024/- against the collateral security of the property i.e. shop measuring 86 sq. yards (size 12' x 65') situated at Jakhal Road, Patran, District Patiala as per sale deed bearing vasika No.2268 dated 28.01.1988.

3. According to the petitioners, due to losses in business, they could not discharge their financial liability as a result of which, their loan account was classified as Non Performing Asset. Consequently, the respondent-bank initiated proceedings under Securitisation and Reconstruction of Financial Assets and of Security Interest Act, 2002 (in short 'the Act') which culminated in issuance of possession notice dated 23.10.2018 (Annexure P-2) under Section 13(4) of the Act for taking physical possession of the mortgaged property. Feeling aggrieved, the present petition has been filed.

4. Vide order dated 05.12.2018, notice of motion was issued in the following terms:

> *"Learned counsel for the petitioners has produced a demand draft No.291209 dated 4.12.2018 for ₹ 7 lakhs in Court today drawn in favour of the respondent-Bank to show the bonafides of the petitioners to clear the outstanding liabilities in installments in due course. The aforesaid original demand draft has been handed over to learned csel for the petitioners to present with the respondent-Bank within five days. The respondent-Bank shall encash the said demand draft, without prejudice to its rights in the writ petition. The photocopy of the said demand draft has been retained on record.*
>
> *Notice of motion to the respondents for 22.1.2019.*
>
> *Notice re: stay.*

Process dasti only."

5. Learned counsel for the petitioners has produced a demand draft bearing No.291240 dated 30.03.2019 amounting to ₹ 4 lakhs in Court today, which has been handed over to Mr. Rohit Pathak, Legal Manager present in Court. He further submitted that the petitioners are ready and willing to clear the outstanding dues or to regularize their 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 petitioners shall approach the respondent-bank within one month from the receipt of certified copy of this order by filing a detailed and comprehensive representation for clearing the outstanding dues or to regularize the loan account.
2. The petitioners shall deposit a draft amounting to ₹ 3 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 one month from the receipt of such representation.

5. It is clarified that in case the petitioners fail to submit their representation or fail to deposit the draft of ₹ 3 lakhs 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 05.12.2018 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

01.04.2019
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No