IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.28751 of 2018
Decided on : 14.02.2019

Kusum Lata ...... Petitioner

Versus

State Bank of India & ors. ...... Respondents

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

Present : Mr. V.S.Rana, Advocate
for the petitioner.

Ms. Madhu Dayal, Advocate
for respondent No.1.

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Manjari Nehru Kaul, J.

Prayer in the present 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 order dated 24.05.2017 (Annexure P-5) passed by District Magistrate-cum-DC, Kurukshetra.

2. The case in brief is that the petitioner along with her husband had availed Term Loan of ₹ 8 lakhs from the respondent-bank in the year 2009, which was to be repaid in monthly installments of ₹ 9,910/- each. Thereafter, she along with her husband took another Term Loan amounting to ₹ 20 lakhs in the year 2013, which was to be repaid in monthly installments of ₹ 25,828/-. The said loans were availed by mortgaging the following property:

> *"House No.1330, Sector 7, Urban Estate, Kurukshetra measuring 172.224 sq. yards."*

3. According to the petitioner, she had in fact paid in excess in both the loan accounts. However, the respondent-bank in the year 2016 declared both the loan accounts as Non-Performing Asset and subsequently initiated the proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Act'). The petitioner thereafter with the consent of the respondent-bank got both the loan accounts regularised and as late as on 31.10.2018, ₹ 2 lakhs were transferred by the daughter and husband of the petitioner in the account of the respondent-bank. However, the respondent-bank approached the District Magistrate, Kurukshetra by moving an application under Section 14 of the Act. Vide order dated 24.05.2017, District Magistrate, Kurukshetra directed the Superintendent of Police, Kurukshetra to provide police protection for taking possession of the mortgaged property. The petitioner approached the bank for taking a lenient view but it was to no avail. However, on 14.09.2018 (Annexure P-8) the respondent-bank issued possession notice under Section 13(4) of the Act. The petitioner challenging the said order filed CWP No.24557 of 2018, which was dismissed as withdrawn with liberty to avail the alternative remedies on 25.09.2018. The petitioner thereafter approached Debts Recovery Tribunal, Chandigarh against the action of the respondent-bank by filing SA No.204/18, which was dismissed on 27.10.2018. Hence, the present petition has been filed.

4. Learned counsel for the petitioner submitted that the petitioner is ready and willing to clear the outstanding dues or to regularize the loan accounts within a reasonable period.

5. Learned counsel for the respondent-bank submitted that in case a reasonable proposal is made by the petitioner, 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 petitioner shall approach the respondent-bank within one week from the date of receipt of certified copy of the order by filing a detailed and comprehensive representation for clearing the outstanding dues or to regularize her loan account.
2. The petitioner shall deposit a draft amounting to ₹ 2 lakhs along with the representation.
3. Respondent-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 the respondent-bank but not later than two weeks from the receipt of such representation.
5. It is clarified that in case the petitioner fails to submit her representation or fails to deposit the draft of ₹ 2 lakhs within the specified time, the respondent-bank would be at liberty to proceed in accordance with law.
6. It is further clarified that if the loan accounts of the petitioner

are regularised, then the possession of the mortgaged asset shall be delivered back to the petitioner and this 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

14.02.2019
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No