<u>IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH</u>.

<u>CWP No.17862 of 2020</u>

<u>Date of Decision:-28.10.2020</u>

<u>Ashwani Kumar Gupta</u>.

......Petitioner.

Versus

<u>Tata Capital Housing Finance Limited through its authorized Officer</u>.

......Respondent.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH

Present:- Mr. Sunil Chadha, Senior Advocate assisted by
Mr. Akshay Chadha, Advocate for the Petitioner.

***

<u>JASWANT SINGH, J.(ORAL)</u>

[The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court]

Petitioner has filed the instant writ petition seeking quashing of Letter-cum-Reply dated 05.10.2020 (**P-5**) issued by the respondent whereby written request dated 03.10.2020 (**P-4**) submitted by the petitioner for one time settlement was declined on the ground that amount of Rs.65,00,000/- offered by the petitioner was much below the current outstanding amount of Rs.99,75,000/- and was neither reasonable nor acceptable by the respondent. Further prayer is made for issuance of writ in the nature of Mandamus directing the respondent to accept the aforesaid one time settlement offer made by the petitioner.

Petitioner took a total amount of Rs.99,75,000/- as loan which was sanctioned by way of two different loan accounts to the petitioner i.e.

one for an amount of Rs.23,75,000/- on 29.02.2016 & another for amount of Rs.76,00,000/- on 01.03.2016. The term of both the aforesaid loan accounts was to be completed on 15.03.2031. After the petitioner failed to pay the due monthly installments, the respondent-Tata Capital Housing Finance Limited declared both the loan accounts of the petitioner as Non Performing Assets (NPA) on 9.5.2018. Respondent issued notice dated 13.07.2018 (**P-1**) under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to the petitioner for recovery of the total outstanding amount of Rs.99,60,724/- (Rupees Ninety Lac Sixty Thousand Seven Hundred & Twenty Four Only). Thereafter an application dated 23.03.2019 was moved by the secured creditor/bank under Section 14 of the SARFAESI Act for providing official assistance for taking over physical possession of the secured asset/mortgaged property. The District Magistrate vide order dated 22.11.2019 apppointed Tehsildar who got handed over the possession to the Authorized officer of the respondent-Financial Institution on the same date i.e. 22.11.2019. The first sale notice was published on 28.1.2020 for auction to be conducted on 29.02.2020 with reserve price of Rs.1,35,37,000/-. The auction remained unsuccessful and the position has continued till the sixth sale notice dated 10.10.2020 (**P-3**) with the reduced reserve price as Rs.73,00,000/-.

To clear the outstanding amount petitioner vide letter dated 3.10.2020 (**P-4**) furnished one time settlement offer of Rs.65,00,000/- which has been refused by the respondent-financial institution vide reply dated 5.10.2020 (**P-5**).

The petitioner is seeking quashing of reply dated 05.10.2020

(**P-5**), which admittedly is not an order and hence no writ of Certiorari would be maintainable. It is apparent that the petitioner is not seeking redcemption of the mortgaged property but a direction for acceptance of the proposal for one time settlement without referring to or attaching any Policy of respondent-Financial Institution. In the light of the judgment of the Hon'ble Supreme Court in **M/s Sardar Associates & Ors. Vs. Punjab & Sind Bank & Ors.** 2009(8) SCC 257 no writ would be maintaiable qua the direction to accept the One Time Settlement proposal in the absence of any operative/functional One Time Settlement Policy.

After arguing for sometime, learned Counsel for the Petitioner prays for permission to withdraw the present writ petition with liberty to seek his remedy in accordance with law.

Dismissed as withdrawn with aforesaid liberty.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

October 28, 2020
Vinay

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*