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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

* * *

CWP-18874-2020
Date of Decision: 9th November, 2020

Lalit Rajpal and others

Petitioners

Versus

Bank of Baroda and another

Respondents

CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN

* * *

Present: Mr. Aalok Jagga, Advocate for the Petitioners.

Mr. C.S. Pasricha, Advocate for the Respondent/ Bank.

* * *

Avneesh Jhingan, J.

1. The present petition is filed for quashing of order dated 17th January, 2017 passed by the District Magistrate, Panipat under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('Act'), for taking possession of the mortgaged properties. Further, direction is sought to the Respondent No. 1 Bank to consider and accept the offer dated 22nd October, 2020.

2. The Petitioners, four in number, belong to the same family. Three of them have availed credit facilities from Dena Bank, Ram Lal Chowk, Model Town, Panipat (now Bank of Baroda). The packing credit limit of

Rs. 2.40 crores, Negotiation of Bills under LC for Rs. 30 lakhs and an Auto Car loan for Rs. 6 lakhs were availed by the Petitioner No. 1. Petitioner No. 2 had facility of cash credit limit of Rs. 42 lakhs and Petitioner No. 3 had cash credit limit of Rs. 20 lakhs and car loan of Rs. 4 lakhs. To secure the loans, following properties were mortgaged:-

Sale Deed No.	Area
2170 dated 30.06.2004	514.25 sq. yards
8653 dated 04.03.1999	349.40 sq. yards
6918 dated 01.12.2009	565 sq. yards
8654 dated 04.03.1999	346 sq. yards

3. The repayment of loans were defaulted in the year 2013-14. On 24th April, 2015, notices under Section 13 (2) of the Act were issued claiming a total outstanding amount of Rs. 3,21,81,150/-, together with future interest. Non-payment by Petitioners resulted in invoking of Section 13 (4) of the Act on 3rd September, 2015. The Petitioners filed S.A. Nos. 219, 226 and 227 of 2015 before the Debt Recovery Tribunal ('DRT'), which were eventually dismissed in 2015. No appeal appears to have been filed against that order. The Respondent / Bank initiated action under Section 14 of the Act and the District Magistrate passed order dated 17th January, 2017 for taking possession of the mortgaged properties.

4. As per the pleadings, one Hitesh Bhasin filed two civil suits for permanent injunction claiming himself to be tenant in mortgaged properties. The suits were dismissed on 18th January, 2020. An appeal was filed wherein the present Petitioners were Respondents.

5. Meanwhile, due to non-compliance of the District Magistrate's order under Section 14, the Bank filed CWP-16716-2020 in this Court. On 9.10.2020, the following order was passed by this Court in the said writ petition:-

> "1. On the oral request of Mr. C.S. Pasricha, learned counsel for the Petitioner, the entities mentioned in Para No.3 of the present writ petition are impleaded as party Respondents. The amended memo of parties be filed in one week.
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> 2. Notice of motion.
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> 3. On the asking of the Court, Mr. Ankur Mittal, Additional Advocate General, Haryana accepts notice on behalf of the Respondent Nos. 1 to 4. Notice to the newly added Respondents be served dasti.
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> 4. Respondent No. 2 i.e. the District Magistrate, Panipat is directed to issue directions within one week, enlisting the services of Respondent No.3 i.e. the Superintendent of Police (SP), Panipat to extend all the necessary assistance to the Petitioner (Bank) to recover the properties in question, the details of which are set out in the earlier order dated 17th July, 2017 of the District Magistrate. (Annexure P/3). Respondent No.3 shall promptly comply with the said direction of the District Magistrate.
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> 5. List on 17th November, 2020 for reporting compliance."

6. Mr. Aalok Jagga, learned counsel for the Petitioners argues that the Petitioners are willing to settle the accounts and to show their *bona fide,* a photocopy of demand draft amounting to Rs.40 lakhs is attached with the petition. He relies upon letters dated 18th August, 2017 and 22nd October, 2020 whereby initial offer of Rs. 2.53 crores was made, same was later enhanced to Rs. 2.94 crores, the amount was to be paid by proposed purchaser of the mortgaged properties. He further argues that in the demand notice, only three of the mortgaged properties have been mentioned instead of total four, hence taking of possession of all mortgaged properties is beyond the provisions of Section 13 (3) of the Act. Mr. Jagga's next

contention is that under Section 13 (4) (b) of the Act, the Bank should have taken over management of the mortgaged units instead of taking possession of the secured assets. He presses into service a compromise offer dated 1st April, 2016 made by the Bank with Geehan Enterprises to state that the Petitioners are being discriminated against. He relies upon decision of the Supreme Court in ***Sardar Associates and others v. Punjab & Sind Bank and others, 2009 (8) SCC 257*** to state that public sector banks cannot discriminate between defaulters for settling the accounts.

7. Mr. C.S. Pasricha, Advocate appearing on behalf of the Bank on advance notice, vehemently argues that the Petitioners have not approached this Court with clean hands. Not even a penny has been paid after issuance of notice under Section 13 (2) of the Act on 24th April, 2015. The Petitioners have annexed only selected notices issued under Section 13 (2) to urge that all the mortgaged properties have not been mentioned in the demand notice. He submits that if the notices issued to the Petitioners and Guarantor are considered, all the properties are duly mentioned. The submission is that in order to retain possession of the mortgaged properties, civil suits were filed by purported tenants, at the instance of the Petitioners.

8. Considering the rival contentions and after perusing the paper book, it is evident that there was outstanding amount of Rs. 3,21,81,150/-, as on 24th April, 2015. Admittedly, no amount has been paid for the last more than 5 ½ years. The *modus operandi* of the Petitioners is evident. After passing of the order on 17th January, 2017 by the District Magistrate under Section 14 of the Act, an offer letter for the first time, was sent by the Petitioners on 18th August, 2017 to the Bank. However, it was not accompanied by any

payment. The offer was that there is a proposed buyer who will purchase the mortgaged properties for Rs. 2.53 crores. However, the said offer was not pursued. The authorities, for some reason, took no action for implementing the orders under Section 14 of the Act. This facilitated the endeavour of the Petitioners. When on 9th October, 2020, this Court passed the order, quoted above, in the writ petition filed by the Bank, another letter dated 22nd October, 2020 was sent by the Petitioners to the Bank repeating the same offer but enhancing the price to Rs. 2.94 crores. It would be worth to mention that even this letter was also not accompanied by any payment. Thus, from 2015 to till date, no effort for repayment of any portion of the defaulted amount was made. Merely attaching a photocopy of a demand draft of Rs.40 lakhs, along with the present petition, against the outstanding amount of Rs. 3,21,81,150/- plus interest thereon since 2015, does not establish the *bona fides* of the Petitioners.

9. There is another aspect of the matter. The Petitioners pursued their remedies before the DRT, the S.A.(s) were dismissed in the year 2015. They chose to give it a quietus by not filing the appeals. The Petitioners were obviously buying time. The inaction of the authorities to implement the Section 14 order also became a handy tool for the Petitioners to retain possession of the mortgaged properties. No stone was left unturned to delay the taking over of possession of secured properties by the Bank. Two civil suits were filed by one Hitesh Bhasin for permanent injunction, claiming himself to be a tenant. The civil suits were dismissed on 18th January, 2020. Though there is a passing reference of the filing of the suits in the present writ petition, neither the details have been mentioned nor the judgments of dismissal of the suits are annexed. The Petitioners are Respondents in the

appeals filed against the dismissal judgments. Copies of those judgments are surely available with the Petitioners. Be that as it may, the pursuing of the statutory remedy before the DRT and then not taking it to a logical end, also appears to be part of the same strategy. As soon as an order was passed by this Court on 9th October, 2020, the Petitioners chose to shoot another offer letter dated 22nd October, 2020 to the Bank. It is more than clear that selected and well calculated steps were taken only to throw a spanner in the procedure to take over possession of the mortgaged properties. The lack of *bona fides* of the Petitioners is well established.

10. The contention raised by learned counsel for the Petitioners that possession is sought to be taken of properties not mentioned in the demand notice, raises disputed questions of fact. According to learned counsel for the Bank, all the properties are duly mentioned in notices under Section 13 (2) of the Act served upon the Petitioners and the Guarantor. Moreover, the Petitioners had challenged the Section 13 proceedings before the DRT. However, their S.A.(s) were dismissed by the DRT. That order attained finality. Accordingly, there is no occasion for the Petitioners to raise this issue at the present stage in this writ petition. Similarly, the contention that under Section 13 (4) (b) of the Act, the management of the properties should have been taken over by the Bank has only to be noted to be rejected. This argument was available in proceedings before the DRT and more so when no such request is shown to be made to the Bank by the Petitioners. Against the order dated 17th January, 2017, issued by the D.M. under Section 14 of the Act, the Petitioners had a remedy before the DRT, which they chose not to avail of for more than three years.

11. The argument of discrimination in the matter of settlement of accounts by the Bank does not enhance the case of the Petitioners. From Annexure P-18 which is a copy of a settlement by the Bank with another firm, no facts are forthcoming to show any similarity with the facts of the present case. Further, as discussed above, the offer letters by the Petitioners were only to buy time. No genuine attempt was made to clear the defaulted amount.

12. For the reasons mentioned above, no case is made out for interference in the writ jurisdiction. Considering that the Petitioners had indulged in abuse of process of law and further even in the present writ petition, the relevant documents with regard to the civil suits were withheld in spite of the same being in the possession of the Petitioners, the writ petition is dismissed with costs of Rs.50,000/-.

[AVNEESH JHINGAN]
JUDGE

[S. MURALIDHAR]
JUDGE

9th November, 2020
pankaj baweja

Whether speaking / reasoned: Yes

Whether reportable : Yes