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

Civil Writ Petition No.31265 of 2019(O&M)
Reserved on : March 03, 2020
Date of decision: October 06, 2020

Jasleen Kaur and another ...Petitioners

Versus

Punjab National Bank ...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

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

Mr.N.C.Sahni, Advocate for the respondent.

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Harinder Singh Sidhu, J. :

1. Challenge in this writ petition is to the Demand Notice dated 27.06.2019 (P-10) u/s 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (herein for short 'the Act') claiming an amount of Rs. 1,87,77,777/- as on 31.03.3018 by claiming that the Housing Loan account of the petitioners had been declared as Non Performing Asset by the respondent – Punjab National Bank and the subsequent Possession Notice dated 27.06.2019 (P-17) u/s 13(4) of the Act.

2. It has also been prayed that the respondent Bank be directed to release the Title Deeds of Plot No. 142-H, Sarabha Nagar, Ludhiana measuring 570 sq. yards and that the respondent Bank issue `No Due

Certificate' after receipt of the outstanding Housing Loan Account of the petitioners by granting six months time to make complete payment.

3. Petitioner No.1 is Jasleen Kaur. She is the wife of Gurbir Singh son of Jagjit Singh - petitioner No. 2.

4. The case of the petitioners is that on 16.09.2017, respondent bank sanctioned housing loan of Rs.3.50 crore which was to be repayable in 360 months with the moratorium period of 18 months. The said loan was secured by the mortgaged property i.e. Plot bearing No.142-H, Sarabha Nagar, Ludhiana measuring 570 sq. yards which was owned by Jagjit Singh son of Gurnam Singh (since deceased) and the petitioners.

5. Out of the sanctioned loan of Rs.3.50 crore on 16.09.2017, respondent bank disbursed Rs.1,87,50,000/-

6. Petitioner No.2 had another business loan in the name of M/s Gurbir Builders Private Limited. On account of recession it had become Non Performing Asset. On 18.01.2018, respondent had issued notice under Section 13 (2) of the Act followed by possession notice dated 15.10.2018 of the property mortgaged therein situated at Ludhiana-Ferozepur Road, Ludhiana in the name of M/s Gurbir Builders Private Limited. On 18.10.2018, the bank issued a sale notice in respect of the said account.

7. It is the case of the petitioners that a separate property is mortgaged in the loan account of M/s Gurbir Builders and the loan in the Housing Loan is not mortgaged or charged in the loan account of the former. Further, petitioner No.1 who is also co-owner of the Housing Loan property is not a guarantor or borrower in M/s Gurbir Builders Loan

account. Hence, both the loan accounts are separate and distinct with separate properties mortgaged. Thus, the property in Housing Loan account is not at all charged in the loan account of M/s Gurbir Builders Private Ltd.

8. It is further pleaded that since the bank had initiated action in the loan account of M/s Gurbir Builders Private Limited, the petitioners decided to close the Home Loan account which was bearing loan account No.301400NC00000359.

9. On 31.03.2019, petitioner No.1 wrote a letter to respondent bank stating that the mortgaged property in this loan account i.e. Plot No. 142-H, Sarabha Nagar, Ludhiana, was mortgaged only in the Housing Loan account and in no other account. It was a free hold property and petitioner No. 1 wanted a confirmation from the bank that in case the Home loan account is cleared the bank shall released the title deed of the mortgaged property. The petitioner wanted an assurance for the reason that in case the said land is sold, the purchaser would want clear title and also release of title deeds, which were deposited with the bank. Consequently, the petitioner made a request vide letter dated 31.03.2019 (Annexure P4) to the bank to confirm that it would release the title deeds after making the payment of the Home loan. To show her bona fides to clear the entire Home Loan account petitioner No.1 also annexed a cheque of Rs.15 lakhs.

10. On 01.04.2019, respondent replied and admitted that the property was not clubbed in any other loan account. However at the end of the communication the bank stated that after closure of the Housing loan account, the proposal for release of the title deeds will be sent to the

competent authority for their approval. This last line created a confusion in the mind of the petitioner. However later the bank admitted in its letter dated 01.04.2019 (Annexure P-5) that the property was not clubbed in any other loan account.

11. On 02.04.2019, on account of the aforesaid unclear reply given by the bank, the petitioner No.1 requested the bank to return the cheque of Rs.15 lakhs. She further clarified that the property in question is in the name of petitioner No.1 as well who is not even a guarantor in the loan account of M/s Gurbir Builders Private Limited and therefore the bank could not claim any charge upon this property for any other loan account. The petitioner again insisted that the bank has to release the charge after clearing the Home loan account.

12. On 10.05.2019, respondent wrote a letter (Annexure P-7) and stated that the equated monthly installments of the said loan of Rs.3.50 crore, sanctioned on 16.09.2017 came out to be Rs.2,71,052.30 per month. The account was running irregular and the overdue amount of pending instalments was Rs.19,07,378/- as on 30.04.2019. Petitioner No.1 replied back on 22.5.2019 clarifying that the bank had sanctioned Rs.3.50 crore as Home loan but the amount actually disbursed was only Rs.1.875 crore. The Bank had claimed the installment for the entire amount and not on the actually disbursed amount. Request was made to the bank to reconcile the account. On 24.05.2019 without taking into consideration the reply dated 22.05.2019 of petitioner No.1 the bank replied back and stated that the outstanding overdue in the Home loan account was Rs.20,56,990/-.

13. On 27.06.2019, respondent bank issued notice (Annexure P-10) u/s 13 (2) of the Act claiming an amount of Rs.1,87,77,777/- as on 31.03.2018 by claiming that the account has been declared as NPA by the bank on 16.06.2019. On 11.07.2019 the petitioners (loanees) submitted objections u/s 13(3A) stating that they were willing to clear the entire outstanding Home Loan Account and only wanted a confirmation from the Bank that it would release the title deeds of the property mortgaged on the said account. The respondent Bank gave its reply dated 06.08.2019. Later the petitioners had a detailed discussion with the Bank officials and vide letter dated 19.07.2019(Annexure P-13) the Bank stated that the mortgaged property held as security in the Housing Loan Account could be released on adjustment of the entire loan outstanding against that account. The balance recoverable amount was also specified as Rs.1,87,77,777/- as on 31.03.2019 plus upto date interest w.e.f. 01.04.2018.

14. It is the case of the petitioners that thereafter they had a detailed discussion with a prospective buyer of the property who was willing to provide the funds provided the bank gave confirmation that the title deeds would be released after the Housing Loan Account is cleared. On 19.07.2019 the petitioners had a discussion with the Bank officials and handed over a Demand Draft of Rs.25 lakhs to show their readiness and willingness to clear the outstanding Home Loan Account. The said Demand Draft was encashed by the Bank on 24.07.2019. Through letter dated 05.08.2019 (Annexure P-16) the petitioner offered to deposit another Rs.75 lakhs and requested the Bank to grant permission to sell the property.

The Bank however returned the Demand Draft of Rs.75 lakhs. On 05.10.2019 the Bank issued Possession Notice u/s 13(4) of the Act.

15. It is the contention of the petitioners that there was no occasion for the Bank to have issued the said notice when the petitioners were ready and willing to clear the entire outstanding amount and were only interested in a confirmation that the title deeds of the mortgaged property would be returned in that event. It is further contended that the Bank having accepted an amount of Rs.25 lakh being part payment to clear the outstanding loan account pursuant to the meeting dated 19.07.2019 was estopped from initiating proceedings u/s 13(4) of the Act. It has been prayed that the respondent be directed to release the title deeds of the Home Loan Account on receipt of the outstanding payment and six months time be granted to make the entire payment.

16. In the written statement filed on behalf of the Bank apart from taking the plea that the writ petition is not maintainable in view of the alternative remedy available under the Act, it has been stated that the petitioner has not approached this Court with clean hands. The petitioners Jasleen Kaur and Gurbir Singh, Jagjeet Singh (now deceased) and Bhupinder Kaur had got sanctioned a housing loan of Rs.3.50 Crores from the respondent -Bank. Plot No.144-H, Sarabha Nagar, Ludhiana owned by the petitioners, Jagjeet Singh and Bhupinder Kaur was mortgaged for securing the repayment of the loan. The Loan account was classified as NPA on 18.09.2019. Thereafter the respondent- Bank initiated proceedings under the Act. It issued Demand Notice u/s 13(2) of the Act on 27.06.2019

demanding a sum of Rs.1,87,77,777/- due as on 31.03.2018. Due to the death of Jagjit Singh the property has been inherited by his legal heirs Gurbir Singh (son) and Bhupinder Kaur (widow) who are borrowers in Gurbir Builders Pvt. Ltd. On failure to pay the demanded amount within the stipulated period of 60 days of the notice the respondent Bank has taken over symbolic possession of the mortgaged property on 04.10.2019 u/s 13(4) of the Act.

17. Another loan of Rs.6.50 Crores was obtained by Gurbir Builders Pvt. Ltd. Its repayment had been guaranteed by Gurbir Singh Bajaj, Jagjit Singh and Bhupinder Kaur were also the borrowers of the House Loan along with the petitioner No.1. The said account was classified as NPA on 31.12.2017. Demand Notice u/s 13(2) of the Act was served on the borrowers on 18.01.2018 demanding the dues amounting to Rs.6,80,88,873.91. For failure to pay the amount within sixty days of the notice, proceedings u/s 13(4) of the Act were initiated. Symbolic possession of the property mortgaged in that loan account was taken on 15.10.2018. For failure to pay the Bank dues action to sell the mortgaged property was initiated. Sale notice dated 18.10.2018 was issued.

18. It is further stated that the loan obtained by M/s Gurbir Builders Pvt . Ltd was secured not only by the mortgage of property but also by the personal guarantee of Gurbir Singh Bajaj, Jagjit Singh and Bhupinder Kaur who are the borrowers in the Housing Loan Account. There being common borrowers in the Housing Loan Account as well as in the loan account of M/s Gurbir Builders Pvt. Ltd. the properties in both

the loan accounts have a charge of the respondent Bank and as such the respondent Bank is not liable to release any property till the dues of both the loan accounts are cleared by the borrowers.

19. From the above, it is clear that the petitioners Jasleen Kaur and Gurbir Singh, Jagjeet Singh (now deceased) and Bhupinder Kaur had got sanctioned a housing loan of Rs. 3.50 Crores from the respondent – Bank. Plot No.144-H, Sarabha Nagar, Ludhiana owned by the petitioners, Jagjeet Singh and Bhupinder Kaur was mortgaged for securing the repayment of the loan. The Loan account was classified as NPA on 18.09.2019. Thereafter the respondent- Bank initiated proceedings under the Act. It issued Demand Notice u/s 13(2) of the Act on 27.06.2019 demanding a sum of Rs.1,87,77,777/- due as on 31.03.2018. Due to the death of Jagjit Singh the property has been inherited by his legal heirs Gurbir Singh (son) and Bhupinder Kaur (widow) who are borrowers in Gurbir Builders Pvt. Ltd. On failure to pay the demanded amount within the stipulated period of 60 days of the notice the respondent Bank has taken over symbolic possession of the mortgaged property on 04.10.2019 u/s 13(4) of the Act.

20. A loan of Rs.6.50 Crores was obtained by Gurbir Builders Pvt. Ltd. Its repayment had been guaranteed by Gurbir Singh Bajaj, Jagjit Singh and Bhupinder Kaur were also the borrowers of the Housing Loan along with the petitioner No.1. The said account was classified as NPA on 31.12.2017. Demand Notice u/s 13(2) of the Act was served on the borrowers on 18.01.2018 demanding the dues amounting to

Rs.6,80,88,873.91. For failure to pay the amount within sixty days of the notice, proceedings u/s 13(4) of the Act were initiated. Symbolic possession of the property mortgaged in that loan account was taken on 15.10.2018. Action to sell the mortgaged property was also initiated.

21. The loan obtained by M/s Gurbir Builders Pvt. Ltd was secured not only by the mortgage of property but also by the personal guarantee of Gurbir Singh Bajaj, Jagjit Singh and Bhupinder Kaur who are the borrowers in the Home Loan Account. In these circumstances the Bank is right in its contention that there being common borrowers in the Hosing Loan Account as well as in the loan account of M/s Gurbir Builders Pvt. Ltd. the properties in both the loan accounts have a charge of the respondent Bank and as such the respondent Bank is not liable to release any property till the dues of both the loan accounts are cleared by the borrowers.

22. Even the contention on behalf of the petitioners that as the Bank had encashed the Demand Draft of Rs.25 lakhs which had been presented by the petitioners on the assurance of the Bank as contained in its letter dated 19.07.2019 (Annexure P-13) the Bank is estopped from now insisting that the title deeds of the property cannot be released till both the loan accounts are cleared does not advance his case any further.

This letter is reproduced below:

"Sh. Gurbir Singh s/o Sh. Jagjeet Singh and others
66-D, BRS Nagar
Ludhiana.

Reg: Release of mortgaged property held as security in housing loan Account No. 301400NC00000359

We may inform you that the mortgaged property held as security in your housing loan account can be released on adjustment of entire loan outstanding in your housing loan Account No.301400NC00000359 including upto date interest and bank charges. The mortgaged IP will be released to owners/ legal heirs of the immovable property. The balance recoverable in the account will be the balance outstanding as on 16.09.2019 i.e., Rs.18777777/- (Rs. One Crore eighty seven lac seventy seven thousand seven hundred and seventy seven only) plus upto date interest w.e.f., 1.4.2018 plus bank charges. The property mortgaged is immovable property bearing No.142 H situated at Sarabha Nagar, Ludhiana.

Assuring you of our best services always.

Sd/- Sd/- Sd/-

Manager Chief Manager Assistant General Manager."

In this letter, it is stated that the mortgaged property held as security in housing loan account can be released on adjustment of entire loan outstanding in the housing loan Account including upto date interest and bank charges. The amount required to be cleared was the balance outstanding as on 16.09.2018 which had been specified as Rs.18777777/- (Rs. One Crore eighty seven lac seventy seven thousand seven hundred and seventy seven only) plus upto date interest w.e.f. 01.04.2018 plus bank charges.

23. From the pleadings, it is apparent that the petitioners though manifesting their intention to clear the amount, have not cleared that amount. They want another six months to clear the same. The Bank cannot be expected to wait endlessly for the petitioners to clear the amount at their

convenience. There is no illegality in the action of the respondent Bank in proceeding to issue Possession Notice and take all consequential steps as per law to realise their outstanding amount.

24. Accordingly, this petition is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

October 06, 2020

gian/m

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No