

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

CWP NO.315-2020 (O&M)
Date of Decision: 04.03.2021

Arun and anotherPetitioners

Versus

Allahabad Bank, Panipat and othersRespondents

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

Present : Mr. Susheel Gautam, Advocate,
for the petitioners.

Mr. Rajiv Joshi, Advocate,
for the respondent-Bank.

SANT PARKASH , J.

*(The aforesaid presence is being recorded through video conferencing
since the proceedings are being conducted in virtual court)*

By way of filing the present petition, the petitioners have sought issuance of writ in the nature of certiorari for setting aside possession notice dated 18.12.2019 (Annexure P-11) issued by respondent No.1. Further for issuance of directions to respondent No.1 not to take any coercive steps for closure of cold storage at the premises of M/s ABS Fruit Company as also to take 50% of the loan installments from petitioner No.1 and rest 50% be recovered from respondent No.2-Vikram Singh after auctioning the properties mortgaged by him.

Brief facts of the case are that the petitioner No.1 and

respondent No.2 entered into a partnership for 50% under the name and style M/s ABS Fruits Co. for starting joint business of trading commission agents of fruits vegetables etc. for which purpose, they hired a cold store on lease on monthly lease of ₹1,08,500/- p.m.. They approached respondent No.1-Bank and loan of ₹1,25,00,000/- was granted, which was to be repaid in 84 installments. Out of the total installments, They had already paid 20 installments of ₹2,36,000/- each from the joint account, but last 4-5 installments were being paid only by petitioner No.1 as respondent No.2 refused to pay his 50% share of loan installments. Now, respondent No.1 in connivance with respondent No.2 did not accept the 50% share of the installments from petitioner No.1 and instead of making recovery of 50% loan installments from respondent No.2, officials of bank are threatening petitioner No.1 either he should pay whole loan amount or bank will take possession and confiscate all the machinery installed at cold store. Petitioner No.1 served a legal notice dated 20.11.2019 to respondent No.1, but till date no reply has been received. Petitioner No.1 had also filed CWP No.35861 of 2019 before this Court, but the same was dismissed as withdrawn with liberty to approach the bank at the first instance to make offer of payment of the overdue amount. Upon this, petitioner No.1 made offer of payment, but instead of accepting the offer, respondent No.5 in connivance with respondent No.2 affixed possession letter on the premises. Hence, the present writ petition.

While issuing notice of motion, vide order dated 10.01.2020, stay was granted subject to the petitioners depositing a sum of ₹20 lacs

with the respondent-Bank within a period of three weeks, failing which, stay granted shall stand automatically vacated.

Reply on behalf of respondents No.1 and 5 has already been filed in the registry and the same is taken on record.

Perusal of para 2 of the reply would reveal that after the deposit of ₹20 lacs, as per the directions of this Court vide order dated 10.01.2020, the account of the petitioners was regularized. It is further evidently clear that after regularization, the account of the petitioners has again been declared as NPA on 29.01.2021 on account of defaults.

It is a conceded position of law that after the declaration of NPA afresh, fresh proceedings are to be initiated under the SARFAESI Act and the previous action, which is under challenge before this Court, would need no adjudication. A fresh cause of action would arise in favour of the petitioners after the initiation of fresh proceedings under the SARFAESI Act on account of their account being declared as NPA.

Resultantly, the present petition has been rendered infructuous and the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

04.03.2021
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whether speaking/reasoned: Yes/No
whether reportable: Yes/No