

CWP No. 3996 of 2020 (O&M)

Vishnu Dutt

Andhra Bank, Safidon and others

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

Present: Mr. Sandeep Kumar, Advocate for
Mr. Vikram Singh, Advocate for the petitioner.

Mr. Gaurav Goel, 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]

The prayer in the instant petition is for issuance of a writ in the nature of certiorari thereby quashing the notice dated 02.08.2019 (Annexure P-1) and notice dated 29.10.2019 (Annexure P-2) as the respondents are adamant to sell the property of the petitioner despite the fact that the petitioner is guarantor only and even the borrower is ready and willing to repay the loan amount; as also for quashing the order dated 09.12.2019 (Annexure P-3) passed by respondent No.3 whereby respondent No.1 has been empowered to take possession of the mortgaged property without issuing any notice to the petitioner and further issuance of a writ in the nature of mandamus directing respondents No.1 and 2 to sell the property of respondents No.4 and 5 (borrowers) first, instead of selling the property of the borrower and proprietor.

Brief facts of the case are that respondents No.4 and 5 availed the CC limit of Rs.2,00,00,000/- from respondent No.1-bank. The petitioner

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stood as guarantor to the said CC limit and his residential properties were

mortgaged. After paying some installments of the said CC facility, the borrower could not adhere to the financial discipline owing to some financial crisis and as a result thereof, his account was declared NPA on 29.06.2019. The borrower and the petitioner requested the respondent bank to grant them some time to pay the outstanding amount of the said CC facility but the respondent bank issued notice dated 02.08.2019 (Annexure P-1) under Section 13(2) of the SARFAESI Act, 2002 (for short 'the Act') for payment of an amount of Rs.2,12,31,900/-. The petitioner and the borrower approached the respondent bank with the request to put the case under one time settlement as borrower is ready and willing to pay the outstanding amount, but to no avail as the respondent bank issued possession notice dated 29.10.2019 (Annexure P-2) under Section 13(4) of the Act. Although the borrower is ready and willing to pay the outstanding amount, the respondent bank procured order dated 09.12.2019 (Annexure P-3) from respondent No.3-District Magistrate, Jind thereby enabling the bank to take possession of the petitioner's mortgaged properties.

Today, at the very outset, learned counsel for the petitioner prays for permission to withdraw the instant petition with liberty to seek appropriate remedy in accordance with law.

Dismissed as withdrawn with the aforesaid liberty.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

08.09.2021
Maninder

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