HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

****

104 **CWP-5407-2021 (O&M)**

Date of Decision: 01.12.2021

****

Rabinder Nath Jain ... Petitioner

VS.

Canara Bank ... Respondent

****

Coram: Hon'ble Mr. Justice M.S. Ramachandra Rao
Hon'ble Mr. Justice Jasjit Singh Bedi

****

Present: Mr. Abhinav Jain, Advocate for the petitioner

Mr. Rakesh Gupta, Advocate for the respondent

****

M.S. Ramachandra Rao, J. (Oral)

CM-17244-CWP-2021

Allowed as prayed for.

Affidavit filed by Mr. BP Jatav, General Manager of the respondent-Bank is taken on record.

CM stands disposed of.

Main case

Heard counsel for the petitioner and Mr. Rakesh Gupta, Advocate for the respondent-Bank.

In this writ petition, the petitioner assails the action of the respondent-Bank in issuing notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 on 07.08.2017 (P1); possession notice dated 08.11.2017 (P2), physical possession notice dated 28.12.2020 (P3), notice under Section 13(4) dated 08.01.2021 (P4); as also the sale of residential property of the petitioner done through public auction on 11.02.2021 (P8) under the provision of the Act.

The petitioner's son, namely, Ashish Jain was a proprietor of the concern, namely, M/s Vira Hosewears, Ludhiana. The petitioner was a guarantor for the loan granted to the said entity by the respondent-Bank by a Credit Term Loan Facility of Rs.57 lakhs to be paid in monthly instalments. As security for the loan, the residential house belonging to the petitioner was mortgaged to the Bank.

Since the loan was not paid by the borrower as per the schedule, the loan account of the borrower became NPA on 10.06.2017.

Thereafter, a demand notice under Section 13(2) of the Act was issued on 07.08.2017 (P1). Further proceedings under the Act also followed thereafter.

The son of the petitioner wrote a letter in 2018 to the respondent that they were ready for an OTS and were ready to pay Rs.38 lakhs by selling the residential house of the petitioner. According to the petitioner, the same was rejected by the respondent on the ground that the OTS offered ought to be improved upon.

In the meantime, on 20.03.2020, a "***Special Scheme for Settlement of NPAs in Micro, Small and Medium Enterprises (MSME) Sector with Total Dues (Contractual) of Rs.100.00 lakhs and below***" was floated by the Bank. Under the Scheme, "*NPAs classified as doubtful & Loss assets in MSME sector as on 30.09.2019 with total dues (contractual) of Rs.100.00 and below as on the date of settlement*" as also those "*NPAs classified as Sub-standard under Micro and Small Enterprises (MSE) Sector as on 30.09.2019 with total dues (contractual) of Rs.100.00 lacs and below as on the date of settlement*", were covered. The Scheme was extended from 01.04.2020 to 31.03.2021.

On 22.01.2021, when the dues of the borrower had exceeded Rs.1 crore limit by a small amount, the petitioner wrote a letter to the Bank offering Rs.35 lakhs towards OTS for the outstanding dues in the loan account of his son.

On 05.02.2021, the Bank rejected it by making a counter offer that if the petitioner were to make a substantial improvement in the OTS amount, it would consider the matter. Thereafter, the petitioner kept quiet.

In the meantime, the residential property which had been mortgaged by the petitioner to the Bank came to be sold in an e-auction conducted on 11.02.2021 for Rs.37.11 lakhs.

Petitioner's counsel contends that the special scheme was introduced on 20.03.2020 in regard to NPA in MSME sector whose total dues were below Rs.1 crore, was not known to the petitioner. According to the petitioner as on the date when the scheme was introduced on 20.03.2020 (R7), the dues of the petitioner were below Rs.1 crore; and it was the responsibility of the Bank personnel to personally get in touch with the petitioner, apprise the conditions of the scheme to the petitioner, and convince him to accept the terms of the scheme.

We do not agree with the contention of the petitioner.

The petitioner's son is a businessman and the fact that there was OTS scheme floated by the Bank including the respondent-Bank during COVID-19 pandemic was in public knowledge and had received wide coverage in the newspapers, TV programmes and on social media.

Nothing prevented the petitioner or his son to contact the respondent-Bank, at that point of time, to apprise themselves of the OTS scheme floated by the Bank on 20.03.2020 and seek benefit of scheme when their dues were below Rs.1 crore.

That apart, even though the dues of the borrower had marginally exceeded Rs.1 crore in January, 2021, when the petitioner wrote on 22.01.2021 (P6) for settlement under the OTS policy, the Bank vide letter dated 05.02.2021 (R10) showed inclination to settle, notwithstanding the loan dues were above Rs.1 crore, if the petitioner was willing to pay more amount under the OTS.

Having regard to such a lenient view taken by the Bank, we are of the opinion that the petitioner should have accepted the suggestion of the Bank and offered higher amount in OTS and settled the dues.

According to the Bank, the OTS policy for MSME declared by it on 20.03.2020 had been published in the Bank's website and the branches gave adequate publicity to the scheme through various means such as display in the notice board and by way of banners.

In the affidavit of the General Manager of the respondent filed on 15.11.2021, it is stated that though separate letters were not sent to the borrowers, recovery camps were held at different branches and the One Time Settlement offers received in consonance with the policy of the bank, were accepted by the respective authorities as per the delegated powers allocated. It is stated that 142 cases were settled under the OTS for the area under the purview of the General Manager.

It is not the case of the petitioner that there was any animosity or hostility shown to the petitioner or his son by the Bank or that there was any *mala fide* intent in the conduct of the Bank in not considering the case of the petitioner/borrower under the OTS policy.

In the circumstances, we do not find any illegality or arbitrariness in the action of the respondent in not considering the petitioner under the OTS scheme dated 20.03.2020 floated by the Bank which would warrant interference by this Court under Article 226 of the Constitution.

We do not find any merit in the writ petition and the same is accordingly dismissed.

(M.S. Ramachandra Rao)
Judge

01.12.2021
V.Vishal

(Jasjit Singh Bedi)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*