

114

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

CWP-8294-2021

Date of Decision:15.09.2021

Nisha Singh

...Petitioner

Versus

District Magistrate, Ludhiana and others

...Respondents

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

Present: Mr. Puneet Jindal, Senior Advocate with
Mr.Kunal Mittal, Advocate
for the petitioner.

Ms. Sunint Kaur, AAG, Punjab
for respondents No.1 and 2.

Mr. Arvind Thakur, Advocate
for respondents No.3 and 4.

[The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.]

SANT PARKASH, J.

By way of filing the present writ petition under Article 226 of the Constitution of India, petitioner, inter alia, assails the action of the Tehsildar, whereby physical possession of the dwelling house of the petitioner, i.e. Plot No.670 situated at Village Dhandari Kalan, abadi known as Phase-2, Urban Estate, Tehsil and District Ludhiana has been ordered to be handed over to respondent No.4.

Brief facts of the case are that the petitioner had initially availed a housing loan facility of Rs.59,90,000/- on 02.12.2009 from

Reliance Home Finance Limited. Subsequently, the said loan account was taken over by M/s Religare Finvest Limited-respondent No.3 on 08.08.2012. It is averred in the petition that M/s Vaishno International Pvt. Limited along with Mr. Viay Partap Singh and petitioner (Nisha Singh), who are Directors of the M/s Vaishno International Pvt Limited, had also availed two loan facilities as Borrowers/Co-borrowers amounting to the tune of Rs.1,17,00,000/- and Rs.4,50,00,000/- which were sanctioned on 31.01.2015 and 19.01.2015 respectively vide agreement bearing Loan Account Nos. XMORLUD00057766 AND XMORLUD00057351.

The ground of challenge in the present writ petition is that the original disbursement of the housing loan on 30.11.2009 being Rs.59,90,000/-, i.e. less than Rs.1 crore would not have given a right to NBFC or its assignee to initiate recovery proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short "SARFAESI Act") in the light of the notification dated 05.08.2016 (P-10). It is averred in the petition that the action taken under Section 14 of the SARFAESI Act in handing over the possession of the property in question in favour of respondent No.4 is not in accordance with law.

This Court has heard the learned counsel for the parties.

As it is evidently clear that from the averments made in the writ petition itself that there were total three loans raised including housing loan and two business loans. Against the said housing loan, the petitioner had mortgaged the following property:-

"Plot No.670 measuring 500 square yards situated at Village Dhandari Kalan, abadi known as Phase-2, Urban Estate, Tehsil

and District Ludhiana.”

For the other two business loans, the petitioner, being one of the Directors of M/s Vaishno International Pvt. Limited, had mortgaged following properties:-

- (a) Residential House No.885 measuring 249.37 square yards, Urban Estate, Phase-2, Ludhiana;
- (b) Factory, land & building measuring 23K-0M situated at village Paharuwal, H.B. No.188, Sub-Tehsil Koom Kalan, Tehsil & District Ludhiana;
- (c) Property measuring 05K-06M situated at Village Paharuwal, H.B. No.188, Sub-Tehsil Koom Kalan, Tehsil & District Ludhiana;
- (d) Property measuring 16K-03M situated at Village Paharuwal, H.B. No.188, Sub-Tehsil Koom Kalan, Tehsil & District Ludhiana; and
- (e) Plot bearing No.E-716 measuring 1000 square yards situated at Phase-III Focal Point, Ludhiana.

It has also come on record that total outstanding balance of two aforesaid loan accounts is Rs.2,05,77874.67 against the petitioner as also against M/s Vaishno International Pvt. Limited, in which the petitioner is one of the Directors.

In a connected matter bearing **CWP No.15930 of 2019 (M/s Religare Finvest Ltd. Vs State of Punjab and others)**, the secured creditor has sought the possession of the property, i.e. House No.670 situated at Village Dhandari Kalan, abadi known as Phase-2, Urban Estate, Tehsil and District Ludhiana along with other properties through the office of District Magistrate, Ludhiana on account of the above-said two business loan accounts having been classified as NPA on 31.07.2015 after default in repayment schedule by the M/s Vaishno International Pvt. Limited.

In the said connected writ petition, the secured creditor has already taken over the possession of the house in question and the writ petition has already been disposed of by this Court vide order of even date.

At the time of hearing, it is fairly conceded by the learned senior counsel for the petitioner that no notice under Section 13 (2) of the SARFAESI Act recalling the housing loan has been issued till date. The notice under Section 13(2) of the SARFAESI Act annexed with the petition pertains to recalling of two above-said business loans.

Faced with the above-said position, learned senior counsel for the petitioner prays for withdrawal of the present writ petition with liberty to avail alternative remedy before the appropriate forum.

In view of the above, the present writ petition is **dismissed as withdrawn** with liberty as prayed for.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

15.09.2021

mks

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO