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

CWP NO.13128-2021
Date of Decision: 03.08.2021

MAKHAN SINGH ....PETITIONER..

Versus

PNB HOUSING FINANCE LTD. AND ANR. ....RESPONDENTS..

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

Present : Mr. Mukesh Kumar Bhatnagar, Advocate,
for the petitioner.

Mr. Nitin Grover, Advocate,
for the respondents-Bank.
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SANT PARKASH, J.

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

The instant petition has been preferred under Article 226/227 of Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to settle the account as per OTS Scheme as the account of the petitioner has become NPA due to unavoidable circumstances and now, he is ready to settle the account as per OTS Scheme.

Brief facts of the case are that the petitioner in order to purchase land for construction of house raised a loan of ₹24.00 lac from the respondent-Bank. He regularly paid the installments upto the year 2013 but suddenly the work of the petitioner failed and he could not deposit the monthly installments. In March, 2014, the respondent-Bank declared the account of the petitioner as Non Performing Asset (for short, 'NPA'). On 08.05.2014, the respondent-Bank issued notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act) for ₹25,73,956/- and, thereafter, notice under Section 13(4) of SARFAESI Act was also issued on 21.07.2014. On 08.01.2015, the respondent-Bank approached the District Magistrate (DM) for possession of the mortgaged property and ultimately, in the year 2017, the physical possession of the pledged property was taken by the respondent-Bank. Later on, on 29.07.2017, a compromise was effected between the petitioner and the respondent-bank, whereafter, ₹8.00 lac was paid through cheque on 10.08.2017 and ₹2.00 lac was paid in cash on 23.08.2017. Later on, the petitioner could not make the payment of remaining amount as per compromise, which again compelled the respondent-Bank to seek the possession of the property, which was taken by the respondent-Bank in the year 2017. Thereafter, the respondent-Bank floated OTS schemes for one time settlement of NPA account time to time. The petitioner sent several representations to the respondent-Bank for settling the NPA account as per the scheme but the respondent-Bank is not paying any heed on the request of the petitioner and even has not taken into consideration the fact that he has built the house for his residence, which is his only residential house. Hence, the present writ petition.

In response to the petition, written synopsis have been filed on behalf of the respondent-Bank today, wherein, it has been specifically mentioned that on 09.08.2017, the petitioner approached the respondent-bank and agreed to repay the entire loan amount of ₹22.00 lac; and handed over 04 cheques for a sum of ₹8.00 lac, ₹5.00 lac, ₹ 5.00 lac, ₹2.00 lac besides paying ₹2.00 lac in cash in the loan account and, therefore, the possession of property was handed over back to the petitioner. But, out of the above said 04 cheques, only one cheque of ₹8.00 was honoured and rest of three cheques amounting to ₹12.00 lac were dishonoured and since then, nothing has been paid by the petitioner. The respondent-bank had been repeatedly asking the petitioner but he did not accede to the request. In fact, he sold the mortgaged asset/property to Satwinder Kaur w/o Mandip Singh, through his special power of attorney, Mandip Singh, vide registered sale deed dated 25.11.2020 and accordingly, mutation was entered and sanctioned, which had been validly mortgaged with the respondent-bank. On 21.01.2021, a criminal complaint was filed before the Senior Superintendent of Police, Jalandhar City, Jalandhar against the petitioner as well as Mandip Singh and Satwinder Kaur and an appeal against the order of sanction of mutation was also filed, in which, status quo order dated 25.01.2021 was passed with regard to transfer/sell/gift the property in question, which is pending before the Sub-Divisional Magistrate Jalandhar for 19.08.2021. Moreover, the petitioner is a habitual offender and was also declared as proclaimed offender in case No.COMA30226/2013, vide order dated 31.07.2014 passed by learned Judicial Magistrate Ist Class, Jalandhar. In fact, neither any OTS scheme (Annexure P-3) has been floated by the respondent-Bank nor any representation (Annexure P-4) has been received by the respondent-Bank as alleged by the petitioner in his petition. Otherwise also, the petitioner has an alternative remedy under Section 17 of the SARFAESI Act to approach the Debt Recovery

Tribunal.

In view of the above and finding that this Court is not inclined to interfere, learned counsel for the petitioner prays for withdrawal of the instant petition with liberty to seek remedy before the appropriate authority i.e. Debt Recovery Tribunal in accordance with law.

Dismissed as withdrawn with the aforesaid liberty.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

03.08.2021
sonika

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