

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

CWP No. 15033/2021

Date of decision : 09.08.2021

Sh. Gurmeet Attri and another

.... Petitioners

versus

State Bank of India and others

... Respondents

**Coram: Hon'ble Mr. Justice Jaswant Singh
Hon'ble Mr. Justice Sant Parkash**

Present Mr.Sandeep Saini,Advocate for the petitioners

Mr.Rakesh Gupta,Advocate for the respondent-Bank.

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

Jaswant Singh, J. (Oral)

Petitioner no.1 Gurmeet Singh, proprietor of petitioner no.2-M/s Attri Mushrooms (a proprietorship concern) has sought quashing of possession order dated 21.1.2020 (Annexure P-7) whereby physical possession of the secured asset has been taken over. Further prayer is to seek a writ of mandamus for staying the E-auction of sale notice dated 3.4.2021 (P-23) as also directing the respondent Bank to stand on the OTS dated 23.11.2020 (Annexure P-12) while quashing the Memo dated 11.1.2021 (P-17) conveying the cancellation of OTS,

Petitioner no.2 availed a term loan of Rs.20 lacs and a CC Limit facility for a sum 10 lacs from State Bank of India in the year 2017 against

primary security of hypothecation of moveable properties as also by way of equitable mortgage/charge against a 19 marlas plot with built up portion being the share of undivided total land measuring 2 kanals 17 marlas situated in Sadhaura, Tehsil Bilaspur, District Yamuna Nagar as collateral security.

Due to lack of financial discipline both the accounts were declared NPA on 31.3.2019. A Notice under Section 13(2) of SARFAESI Act was issued on 12.4.2019 (P-1) recalling the aggregate of both the accounts to the tune of Rs.34,50,846/- due as on 5.4.2019. Notice under Section 13(4) of SARFAESI Act,2002 seeking symbolic possession of aforesaid secured asset/ collateral asset was issued on 24.7.2019. Physical possession is stated to have been taken on 21.1.2020 as also a 30 days' notice issued before sale of seized assets vide Memo dated 21.1.2020 (P-7).

It transpires that respondent-SBI had issued a non-discriminatory, non-discretionary OTS Scheme 2020 in October 2020. Petitioners, being eligible were entitled to an OTS amount of Rs.18,89,152/- to be paid to the Bank towards full and final settlement with a sacrifice of around Rs.10 lacs to apply alongwith deposit of stipulated minimum of 5% for processing its case. The OTS qua the petitioners was sanctioned on 23.11.2020 vide Annexure P-12, whereby the petitioners in terms of condition no.4 were required to deposit another 10% of the aforesaid OTS amount within 30 days from date of sanction. For ready reference condition no.4 of the OTS reads as under:-

*“4. Another 10% of the OTS
Amount will have to be deposited by
you as first installment within 30 days*

*from the date of sanction of OTS
failing which the OTS sanction will
be rendered infructuous and OTS
treated as failed. ”*

Non-deposit of the 10% of the OTS amount within time led to the cancellation of the OTS vide memo dated 11.01.2021 Annexure **P-17**.

Heard learned counsel for the petitioners as well as for respondent-Bank, who are on advance notice.

Learned Counsel for the petitioners submits that his clients are now ready and willing to comply with the terms of the sanctioned OTS by depositing not only 10% but all subsequent proposed installments.

The learned counsel for the respondents-Bank has contended that the offer of payment of amount in terms of sanctioned OTS at this stage is wholly misplaced as in terms of condition no.4 of the Sanction Letter (P-12), the petitioners were required to deposit 10% of the OTS amount within 30 days, which concededly the petitioners have failed to do so leading to the natural consequence of the OTS sanction having been rendered infructuous meaning thereby that the petitioners had yet not entered the OTS scheme, therefore there is no question of extension of time for the OTS and that too after a delay of more than 9 months.

We are in total agreement with the stand of the respondent-Bank and find no ground for entertaining the plea of revival of sanctioned OTS by permitting the deposits at this stage. We also find that the plea regarding challenge to the possession notice under Section 13(2) & (4) is also misplaced as no sufficient grounds have been raised, which in any case

are required to be raised before the DRT. The Hon'ble Supreme Court has time and again deprecated the invocation of writ jurisdiction in such like matters.

In view of the above no ground for interference is made out. Thus writ petition stands **dismissed**. However, the petitioners would be at liberty to seek their remedy before the DRT in accordance with law.

(Jaswant Singh)
Judge

09.08.2021
joshi/vinay

(Sant Parkash)
Judge

Whether speaking/ reasoned

Yes/No

Whether Reportable

Yes/No