

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-16780-2021

Date of Decision:02.09.2021

Surinder Kumar

...Petitioner

Versus

Canara Bank, Branch Dalhousie Road, Pathankot

...Respondent

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

Present: Ms. Jigyasa Tanwar, Advocate,
for the petitioner.

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

SANT PARKASH, J.

The instant writ petition has been filed under Article 226/227 of the Constitution of India seeking a writ in the nature of certiorari for quashing of order dated 23.04.2021 (P-11), whereby District Magistrate ordered issuance of process under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short "SARFAESI Act") for taking physical possession of the residential house of the petitioner.

Undisputed facts of the case are that petitioner had availed financial assistance of Rs.44,90,000/- including Rs.12,00,000/- for housing loan, Rs.7,90,000/- for Vehicle Loan and Credit Cash Limit of Rs.25,00,000/- for his business of fishing from the respondent-Bank in the year 2017 by mortgaging his two residential properties measuring 6.37 Marlas and 13 Marlas situated at Street No.5, M.C. Indira Colony,

Pathankot. The petitioner had been regularly paying the installments but due to alleged scarcity of funds, petitioner became irregular in payment of some installments and defaulted the same. Thereafter the respondent-Bank issued notice dated 27.12.2018 (P-1) under Section 13(2) of the SARFAESI Act; possession notice dated 04.03.2019 (P-2) under Section 13(4) of the SARFAESI Act read with Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 and sale notice dated 05.02.2020 (P-3). On an application filed under Section 14 of the SARFAESI Act by the respondent-Bank, the District Magistrate, Pathankot, directed initiation of the proceedings for taking possession of the property in question vide order dated 23.04.2021 (P-11). The petitioner approached learned Debts Recovery Tribunal-III, Chandigarh (for short 'DRT') by way of SA, challenging the said order and the same was dismissed by the learned DRT vide order dated 20.07.2021 (P-13) as barred by limitation.

This Court has heard the learned counsel for the petitioner.

From perusal of the case file, it would be revealed that the petitioner had availed financial assistance of Rs.44,90,000/- from the respondent-Bank for his business of fishing. The aforesaid amount was concededly secured by mortgaging the above-said properties with the respondent-Bank. It is also not in dispute that when the petitioner failed to repay the loan amount, the respondent-Bank took measures under the SARFAESI Act for recovery of the outstanding loan amount. In the said proceedings the Additional District Magistrate, Pathankot ordered issuance of process under Section 14 of the SARFAESI Act for handing over the possession of the property in question to the secured creditor, i.e.,

respondent-Bank.

It would be further revealed that the petitioner applied under the OTS scheme dated 12.03.2021 (P-6) and as per the terms and conditions of said OTS scheme, the petitioner was required to deposit Rs.4,10,000/- to be adjusted immediately (kept in no lien account) including an upfront amount of Rs.10,000/-; Rs.24,40,000/- to be paid on or before 26.03.2021 and further Rs.10,00,000/- on or before 20.04.2021. It is not disputed that the petitioner only deposited a sum of Rs.4,10,000/-. Instead of adhering to the terms and conditions of OTS Scheme, the petitioner approached the DRT. As per the directions of DRT issued vide order dated 29.06.2021 (P-12), petitioner had deposited Rs.10,00,000/-.

The prayer of the counsel for the petitioner is two folds.

Firstly, learned counsel for the petitioner contended that the learned DRT wrongly rejected SA on account of being time barred. With regard to this submission, the appropriate forum for the petitioner was to file appeal before the Debts Recovery Appellate Tribunal (DRAT) and instead of availing that remedy, the petitioner has approached this Court under Article 226 of the Constitution of India, which is not legally permissible.

Secondly, it has been contended that this Court should order refund for the amount of Rs.10,00,000/- which was admittedly deposited pursuant to the order dated 29.06.2021 (P-12) passed by the learned DRT. In this context, it would be appropriate for the petitioner to seek refund of the aforesaid amount from the forum of DRT only because the amount was deposited as per the directions of DRT.

At this stage, learned counsel for the petitioner intends to withdraw the present petition with liberty to seek the appropriate remedy, in

accordance with law.

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

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

02.09.2021
mks

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