

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

**CWP-21973-2021
Date of Decision:21.12.2021**

Sanjay Bansal Petitioner

Vs.

The District Magistrate, Yamuna Nagar and others Respondents

(Through Video Conferencing)

**CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MR JUSTICE JASJIT SINGH BEDI**

Present: - Mr.G.C. Shahpuri, Advocate, for the petitioner.

M.S. RAMACHANDRA RAO, J.

The background of the Case

The petitioner, his son and two others were partners of a Firm by name M/s Asian Ply Wood Industries, under a partnership deed dated 16.07.2018.

The firm borrowed a loan of Rs.3,50,99,338/- from respondents No.2 & 3 in the year 2017, after mortgaging the house of the petitioner.

The firm made certain payments upto June 2017 and thereafter stopped making any payment. So its account was declared NPA in the year 2019.

Since the loan was not repaid as per the terms thereof, respondents No.2 & 3 issued a demand notice dt. 31.07.2019 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002 [for short 'the Act'] to repay Rs.3,63,54,655/- within 60 days from the date of receipt of the said notice.

Since payment was not made within the said period, notice dt. 07.02.2020 was issued by respondents No.2 & 3 to the borrower and the partners under Section 13(4) of the Act for taking symbolic possession of the house of the petitioner, which had been mortgaged to respondents No.2 & 3.

Respondents No.2 & 3 filed an application under Section 14 of the Act to take physical possession of the asset before the District Magistrate, Yamuna Nagar (respondent No.1). The said application was ordered on 31.12.2020.

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Challenging the same, this Writ Petition is filed.

Petitioner has also questioned the notice under Section 13(4) of the Act issued on 07.02.2020 in this Writ Petition.

It is the contention of the learned counsel for the petitioner that the other two partners by name Satish Kumar and Rajesh Kumar quarreled with the petitioner and his son, that they intended to grab the Firm, and also leveled false allegations against the petitioner and his wife that they committed fraud. According to the petitioner these two persons got the property of the Firm pledged with the Punjab National Bank to be sold in a public auction on 19.3.2020 and ensured that the property was purchased by persons who were family members of those two persons in connivance with the said Bank.

It is also alleged that on account of the fraud committed by the aforesaid two persons, the petitioner suffered a huge financial loss and could not pay the installments to respondents No.2 & 3.

It is contended that the petitioner had filed objections to the notice issued under Section 13(2) of the Act on 31.07.2019 and requested to adjust the loan installments by waiving off interest and stop the sale of the property of the Firm, but respondents No.2 & 3 did not consider the said objections and issued a notice under Section 13(4) of the Act on 07.02.2020. It is further contented that if the residential house of the petitioner is also sold then the petitioner and his family have no place to live; that the petitioner had made a proposal for OTS on 23.08.2021 to respondents No.2 & 3 and sought time to make arrangements; and till then respondents No.2 & 3 be directed not to sell the residential property of the petitioner. It is the contention of the petitioner that the petitioner is ready and willing to repay the amount to respondents No.2 & 3 if sufficient time is granted. It is also sought that the petitioner be not dispossessed from his residential property.

The Consideration by this Court

It is not in dispute that the borrower-Firm had not made any payments to respondents No.2 & 3 from 2017 though they had borrowed more than Rs.3.50 crores as loan from respondents No.2 & 3. The loan account of the borrower-Firm had been declared as NPA in 2019 itself, and though 60 days time have been given to the Firm, it could not repay the dues to respondents No.2 & 3.

It may be that the petitioner had disputes with two of the other partners in the Firm, but that does not excuse the Firm to commit default in making payment to respondents No.2 & 3.

Since the petitioner had not paid the loan dues after receiving the notice under Section 13(2) of the Act issued by respondents No.2 & 3 on 31.07.2019, the respondents No.2 & 3 had no choice but to proceed further and issue notice dt. 07.02.2020 under Section 13(4) of the Act for taking symbolic possession of the house of the petitioner and then approach the District Magistrate, Yamuna Nagar (respondent No.1) by filing application under Section 14 of the Act for taking physical possession of the house of the petitioner.

We do not find anything arbitrary or illegal in the action of respondents No.2 & 3 in taking steps under the Act warranting interference by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

Accordingly, Writ Petition fails and is dismissed. No costs.

(M.S. RAMACHANDRA RAO)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

21.12.2021

Vivek

Whether speaking/reasoned: Yes/No

Whether reportable : Yes/No