

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

CWP-28494-2019 (O&M)
Date of Decision:-**06.01.2021**

Krishan Kumar Goel

... Petitioner

Versus

Reserve Bank of India and another

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Mr. Aalok Jagga, Advocate
for the petitioner.

Mr. D.K. Singal, Advocate
for respondent No.2.

KARAMJIT SINGH, J.

Case has been heard through video conferencing on account of
COVID-19 Pandemic.

CM-11846-2020

This application has been moved by respondent No.2-ICICI
Bank seeking vacation of the stay order dated 1.10.2019 to the extent
whereby the Co-ordinate Bench had directed it not to take any coercive steps
in respect of the mortgaged property of the petitioner.

With the consent of learned counsel for the parties, the main writ petition was also been taken up and heard along with this CM.

CWP-28494-2019

The petitioner has filed this writ petition with the prayer that necessary direction be issued to respondent No.2 -ICICI Bank to upgrade the loan account of the petitioner to a standard loan account in terms of Clause 4.2.5 of the Master Circular-Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances (hereinafter be called as 'Master Circular'), issued by respondent No.1-Reserve Bank of India (hereinafter be called as 'RBI') in exercise of its power under Section 21 & 35-A of the Banking Regulation Act, 1949, on the basis of judgment delivered by the Co-ordinate Bench of this Court in CWP-13888-2015 titled as **M/s Oswal Spinning & Weaving Mills Ltd. Vs. Reserve Bank of India & Ors.,** decided on 11.4.2016 with further prayer to quash the impugned notices dated 30.11.2016 (Annexure P-5) and 8.5.2017 (Annexure P-8) along with order dated 19.6.2019 (Annexure P-11) and to restrain the respondent No.2-ICICI Bank from initiating any coercive action against the secured assets of the petitioner.

Briefly, the case of the petitioner is that he took loan of ₹51,77,726/- from respondent No.2 on 18.4.2014, against his property. The petitioner faced financial problems and as such was unable to repay the loan as per the schedule. The loan account of the petitioner was declared as Non-Performing Asset (NPA) on 30.9.2016. Then respondent No.2 issued notice

under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter be called as 'the Act of 2002'), Annexure P-5. Subsequently, respondent No.2 issued another notice under Section 13(4) of the Act of 2002 on 8.5.2017 (Annexure P-8). The petitioner failed to repay the loan amount due to pending litigation with the third party which owed ₹35 lacs to the petitioner. On 17.7.2019, the petitioner gave detailed representation to respondent No.2 (Annexure P-9) with request to upgrade his loan account by accepting payment of installments, which were overdue. The said amount comes out to be ₹20 lakhs. However, respondent No.2 ignored the said representation and filed an application under Section 14 of the Act of 2002, for taking over the possession of the secured assets of the petitioner and District Magistrate, Rohtak passed order dated 19.6.2019 (Annexure P-11) in that regard. Hence this petition was filed.

Notice of motion was issued for 5.11.2019, pursuant to which the respondent No.2 put in his appearance through its counsel. In the mean time, respondent No.2 was directed not to take any coercive steps in respect of the mortgaged property.

The respondent No.2 filed an application having CM-11846-2020 seeking vacation of the aforesaid stay order. In the said application, respondent No.2 has pleaded that the actual outstanding amount due towards the petitioner was ₹30,04,380/- as on 30.11.2016. Amount of ₹66,71,806/- was outstanding against the petitioner as on 30.10.2020. The petitioner has failed to pay the said outstanding amount.

We have heard the counsel for the parties, in the main writ petition.

The counsel for the petitioner relied upon the judgment rendered by the Division Bench of this Court in **M/s Oswal Spinning & Weaving Mills Limited's** case (supra) and submitted that loan account classified as NPA could be upgraded. It was further contended that it is not true that if once an account is classified as NPA, it always remains as NPA. The counsel for the petitioner referred to relevant clause of the Master Circular issued by respondent No.1-RBI, which provides for upgradation of loan accounts classified as NPAs.

The counsel for the petitioner further argued that one Parveen Devi owed ₹35 lacs to the petitioner, but she refused to return the said amount to the petitioner and the cheque issued by her was dishonoured. On this, the petitioner filed criminal complaint under Section 138 of Negotiable Instruments Act. After the completion of trial, Parveen Devi was convicted and the appeal and revision filed by her were dismissed. The counsel for the petitioner further argued that even the Hon'ble Apex Court vide order dated 2.5.2019 (Annexure P-3) directed Parveen Devi to deposit the amount of ₹35 lacs. The counsel for the petitioner further submitted that due to aforesaid circumstances, beyond his control, the petitioner defaulted in making repayment of the loan. The counsel for the petitioner further submitted that his loan account be upgraded as the petitioner is ready to make the payment of over-dues. While concluding his arguments, the

counsel for the petitioner submitted that at the same time, the action taken by respondent No.2 under the Act of 2002, be set aside.

On the other hand, the counsel for respondent No.2 submitted that the loan account of the petitioner was declared as NPA in 2016 and thereafter no effort was made by him to repay the loan amount. It is further contended that even after getting the amount of ₹35 lacs from Parveen Devi, the petitioner did not deposit even a single penny with the respondent No.2, to repay the loan amount. The counsel for respondent No.2 further contended that the Master Circular issued by respondent No.1-RBI in 2015 regarding upgradation of loan accounts classified as NPAs, is not applicable to the case of the petitioner, as he failed to pay arrears of interest and principal amount. It is further contended that the petitioner cannot take any benefit of the judgment passed in **M/s Oswal Spinning & Weaving Mills Limited's** case (supra), which is also based on the relevant clause of aforesaid Master Circular, regarding upgradation of loan accounts classified as NPAs. The counsel for respondent No.2 further argued that the petitioner being willful defaulter is not entitled to any relief.

We have considered the submissions made by counsel for the parties.

The relevant provisions of the Master Circular dated 1.7.2015 issued by respondent No.1-RBI are as follows:-

2.1.2 Non-Performing Asset (NPA) is a loan or an advance where

- i. Interest and/or installment of principal remain overdue for a period of more than 90 days in respect of a term loan.

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2.3 'Overdue'

Any amount due to the bank under any credit facility is 'overdue' if it is not paid on the due date fixed by the bank.

.....

4.2.5 Up-gradation of loan accounts classified as NPAs

If arrears of interest and principal are paid by the borrower in the case of loan accounts classified as NPAs, the account should no longer be treated as nonperforming and may be classified as 'standard' accounts. With regard to up-gradation of a restructured/rescheduled account which is classified as NPA contents of paragraphs 12.2 and 15.2 in the Part-B of this circular will be applicable.

.....

4.2.7 Asset Classification to be borrower wise and not facility wise

- i. It is difficult to envisage a situation when only one facility to a borrower/one investment in any of the securities issued by the borrower becomes a problem credit/investment and not others. Therefore, all the

facilities granted by a bank to a borrower and investment in all the securities issued by the borrower will have be treated an NPA/NPI and not the particular facility/investment or part thereof which has become irregular.

The petitioner has also relied upon the judgment passed in **M/s Oswal Spinning & Weaving Mills Limited's** case (supra). In the said case, a writ of mandamus was sought by the petitioner directing the respondents to upgrade its loan account i.e. Export Packing Credit (EPC) to a standard loan account from the Non-Performing Asset (NPA) category. The writ was sought on the basis of a Master Circular issued by respondent No.1-RBI. The said writ was entertained on a purely jurisdictional issue. While disposing of the said writ, the following observations were made by the Court, while giving liberty to the petitioner to avail the alternative remedy:-

“10. Further, to have an account upgraded from an NPA to a standard account, it is not necessary that the entire amounts due from the borrower to a creditor are paid in full. It is sufficient if the amounts due at the material time towards principal and interest are paid.

.....

11. We are, however, unable to agree with Mr. Jagga's contention that merely upon the payment of the amounts due under the EPC account, the petitioner's account no longer remained an NPA and was liable to be classified as a standard account. The manner in which the account is to be

upgraded from NPA to standard is stipulated in the Master Circular itself. The account can be so classified only in the event of the borrower paying the arrears of interest and principal due to the lender under all the accounts. This is clear firstly from the title of Clause 4.2.7-‘Asset classification to be borrower-wise and not facility-wise’ upon which Mr. Rajiv Atma Ram, the learned senior counsel, appearing on behalf of respondent No.2, rightly placed reliance. Further, sub-clause (ii) of 4.2.7 expressly provides that all the facilities granted by a bank to a borrower and investment in all the securities issued by the borrower will have to be treated as NPA and not the particular facility or part thereof which has become irregular. The title to Clause 4.2.7 itself states the asset classification to be borrower-wise and not facility wise. The petitioner has admittedly not paid the arrears due in respect of his first account. The petitioner’s account, therefore, cannot be upgraded from an NPA to a standard account.”

Now adverting to the facts of the present case, it is the admitted case of the petitioner that he took loan of ₹51,77,726/- from respondent No.2-ICICI bank on 18.4.2014 against his property. Thereafter, he failed to repay the loan as per schedule and his loan account was declared as NPA on 30.9.2016. Thereafter, respondent No.2-ICICI bank initiated proceedings against the petitioner under the Act of 2002 to recover the due amount.

Now, the petitioner is seeking up-gradation of his loan account to a standard loan account in terms of Clause 4.2.5 of Master Circular issued by respondent No.1-RBI, which has been detailed above. The Clause 4.2.5 clearly states that the loan account classified as NPA could be upgraded and classified as standard account only if arrears of interest and principal are paid by the borrower. However, in the present case no such payment was made by the petitioner, after his loan account was declared as NPA. The counsel for respondent No.2 has brought to the notice of the Court that as on 30.11.2016 amount of ₹30,04,380/- was outstanding due towards the petitioner and as on 30.10.2020 an amount of ₹66,71,806/- was standing due against the petitioner. The petitioner has failed to establish that he ever paid the arrears of interest and principal amount, so as to become eligible for up-gradation of his loan account from NPA to standard account under Clause 4.2.5 of the Master Circular. The petitioner cannot take any benefit of the judgment rendered in **M/s Oswal Spinning & Weaving Mills Limited's** case (supra) wherein also it was observed that for applicability of Clause 4.2.5 it would be sufficient if the amounts due at the material time towards principal and interest are paid. It is pertinent to note that even in the supra case the plea of the borrower to upgrade his loan account to a standard account was declined. In the present case, the petitioner failed to adhere to the repayment schedule. He has also failed to clear the defaulted amount till date. So he is not entitled to get any relief with regard to NPA loan account. It is made clear that respondent No.2-ICICI Bank is legally competent to recover the dues from the petitioner under the Act of 2002.

In the light of the above, this writ petition is hereby dismissed being devoid of merits. The interim order dated 1.10.2019 stands vacated.

CM-11846-2020 also stands disposed of accordingly.

However, the petitioner is at liberty to avail alternative remedy by approaching the DRT under the Act of 2002. He could also opt for one time settlement scheme, as and when it comes into force.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

06.01.2021
Gaurav Sorot

Whether reasoned / speaking?

Yes / No

Whether reportable?

Yes / No