IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

218 **CWP No. 34220 of 2019 (O&M)**
Decided on : 06.12.2021

Aditya Birla Finance Limited

... Petitioner

Versus

District Magistrate, Gurugram and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI

Present: Mr. Sanjeev Singh, Advocate, for the petitioner.

Mr. Vivek Chauhan, Addl. AG, Haryana
for respondents No.1 & 2.

None for respondents No.3 & 4.

Mr. Aditya Jain, Advocate,
Mr. Shrey Ashat, Advocate and
Mr. Rishu Garg, Advocate for respondents No.5 to 8.

(The proceedings are being conducted through video conferencing, as per instructions.)

G.S. Sandhawalia, J. (Oral)

In the present writ petition filed under Article 226 of the Constitution of India the petitioner, financial institution seeks directions for handing over the physical possession of a built up property i.e. Plot No.46, Block-A, Residential Colony known as Green Wood City, Gurugram.

2. The same is based on the fact that an order has been passed under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') by the District Magistrate, Gurugram on 03.10.2019 (Annexure P-3), whereby on account of default of outstanding dues of Rs.6,61,95,276/- as on 17.05.2019 by respondent No.5, who is the proprietor of respondent No.4-M/s Kapco Enterprises, whereas respondents No.6 to 8 are his close

relatives, the physical possession of the mortgaged property was to be handed over. Any person claiming tenancy or leasehold rights was left open to avail its remedy before the Debt Recovery Tribunal under Section 17 (4A) of the Act. On account of the said order being not executed as such by the State, the Financial Institution was constrained to come to this Court.

3. The case has a checkered history in as much as there has been various violations of the undertakings given before this Court and even before the Apex Court. Keeping in view the fact that the private respondents and their agents have been able to delay in handing over the physical possession of the mortgaged property for over two years, this Court does not deem it fit to engage in the arguments, which have been attempted to be raised by the counsel for the respondents. More so in view of the law laid down by the Apex Court in **'Standard Chartered Bank Vs. V. Noble Kumar and others' (2013) 9 SCC 620.**

4. It is to be noticed that on 23.09.2020, the State was directed to file the affidavit of the respondent No.1-District Magistrate, Gurugram and respondent No.2-Naib Tehsildar, as to why possession of the disputed property has not been taken, which is apparently on account of the fact that order which was sought to be implemented was passed under Section 14 of the Act on 03.10.2019 (Annexure P-3). The implementation was to be done by giving possession notice of 15 days and locks were to be broken up if the

secured assets were found locked. On 08.10.2020, it had been brought to the notice of the Court that there was a interim stay passed by the Civil Court, Gurugram in the suit filed by the alleged tenant against the proprietor of the firm-respondent No.5 and respondent No.6 to 8, who are the close family members of the proprietor and injunction had been taken on 15.11.2019. Accordingly, this Court observed that there was collusion between the 3rd respondent and 5th respondent and directed that the order would not prevent the petitioner from taking possession of the property in question. Counsel for the 3rd respondent at that time had undertaken that he would surrender the possession of the flat and an affidavit would be given by the next date i.e. on 09.10.2020. On doing so, he was to be granted two weeks time to vacate and surrender the possession, since he had filed CM-10422-CWP-2020 in the case and brought forward the case of tenancy. Relevant portion of the order dated 08.10.2020 reads as under:-

> "When the same is looked into, its clear indication that there is collusion between 3rd and 5th respondent to ensure that the possession of the property is not taken pursuant to the provisions of SARFAESI Act. Therefore, this Court is of the considered opinion that the said order, passed by learned Civil Judge (Junior Division), Gurgaon, against 5th respondent, would not prevent the petitioner herein from taking possession of the property in question. In light of the aforesaid observation of this Court, learned counsel appearing for 3rd respondent, seeks 15 days' time to voluntarily surrender the possession of the flat, which is

> in his possession, and he would state that an affidavit to that effect would be filed by him, before the conclusion of the working hours of 9th October 2020, before this Court. His submission is placed on record and he is permitted to file affidavit to that effect and accordingly, he is granted two weeks' time to vacate and surrender the possession of the same to the petitioner herein. With such observation, application in CM-10422-CWP-2020, is hereby disposed of. A copy of this order is directed to be sent to respondent No.1 and 2."

5. Apparently, the needful was not done and on 26.10.2020 directions were issued to respondent No.1 to ensure compliance of the order dated 08.10.2020 and proceedings were deferred for 18.12.2020. A settlement was arrived at on 17.11.2020 inter se the petitioner and the borrowers which is attached with CM-13730-CWP-2020, in which reference was also given of the present litigation. The same had been arrived on the basis of the written proposal made on 13.11.2020 by the proprietor and his family members for settlement of the outstanding dues of Rs.7,89,71,538/- by a payment of Rs.6,30,00,000/- only. A mention was also made of the pendency of the proceedings under Section 17 (1) of the Act before the Debts Recovery Tribunal-II, Delhi. It was further agreed that in the event of any default as per the payment schedule, the deed of settlement was to become null and void.

6. On 26.02.2021, the Coordinate Bench found that since possession was handed over to the landlord as argued by the counsel for the tenant, there was a contempt of this Court, as respondent

No.3 as the occupant/tenant had violated his own undertaking as noticed in the earlier order dated 08.10.2020. Resultantly, two weeks more time was sought to take remedial measures and comply with the undertaking. Further indulgence was granted on 25.03.2021 and the order reads as under:-

> "After going through the pleadings on record, with the able assistance of learned counsel for the parties, it is apparent that the alleged tenant-respondent No.3 and the owners of the mortgaged residential property/respondents No.5 to 8 have tried to mislead the Court regarding the actual physical possession of the secured asset on different dates. That apart, the conduct of the principal borrowers/private respondents No.5 to 8 in adhering to the terms and conditions of settlement is not bona fide.
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> At this stage, without going into the respective misconduct of the parties, we feel that there is no legal impediment in implementing the order dated 03.10.2019 passed by District Magistrate, Gurugram under Section 14 of the SARFAESI Act.
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> However, we deem it expedient to grant one opportunity to the principal borrowers/respondents No.5 to 8 to give a date before which they will voluntarily and peacefully handover physical possession of the mortgaged residential flat.
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> List on 01.04.2021 for further consideration."

7. On 01.04.2021, respondents No.5 to 8 prayed for 10 days time to voluntarily and peacefully surrender the physical possession of the mortgaged property. The affidavit of respondents No.5 & 6 was to be filed by the next date of hearing and the case was listed on 06.04.2021. On the said date, two days more time was

taken for the purpose to persuade the Bank for accepting the agreeable amount within a reasonable time with the undertaking that in case of failure, respondents No.5 to 8 would hand over the vacant possession of the property. On 09.04.2021 this Court was apprised that an SLP against the order dated 01.04.2021 had been filed and accordingly proceedings were deferred for 28.04.2021. Accommodation was taken on the said date on account of the fact that the case was listed for hearing on 30.04.2021 before the Apex Court.

8. It is not disputed that the Apex Court had also passed a conditional order on 30.04.2021, whereby it had noticed that a sum of Rs.1 crore had been paid by M/s Kapco Enterprises against the settlement of Rs.6,30,00,000/-. An opportunity was given to deposit Rs.2 crores before 05.05.2021 and the Bank was to examine the fresh proposal sympathetically, since the earlier settlement dated 17.11.2020 had also been breached. Further caveat was put in case the amount of Rs.2 crores is not deposited by 05.05.2021, the special leave petition would stand dismissed. The said order dated 30.04.2021 (Annexure A-1) passed in **SLP Nos.5699 and 6528 of 2021** titled as **M/s Kapco Enterprises & others Vs. Aditya Birla Finance Limited and others'** reads as under:-

> "The dispute in the present special leave petition is with regard to repayment of loan taken by the petitioner-Company from the 1st Respondent-Aditya Birla Finance Limited. It is not disputed that the agreement was entered

into between the parties on 17.11.2020 according to which, the petitioners were required to pay the entire settlement amount of Rs.6,30,00,000/- (Rupees six crores thirty lakhs only) by 28.01.2020. The total due amount at that stage was Rs.7,89,71,538/- (Rupees seven crores eighty nine lakhs seventy one thousand five hundred thirty eight only) and the settlement was made for an amount of Rs.6.30 crores. In terms of the said settlement, the petitioner-Company had paid an amount of Rs.1 crores but did not comply with the schedule of payment of further dues. Mr. Arkaj Kumar, learned counsel appearing for the petitioner has made statement that the petitioner-Company is willing to pay an amount of Rs.2 crores through bank draft on or before 05.05.2021 and has further submitted that he shall make a fresh proposal for settlement of the dues which may be considered by the 1st Respondent. Mr. Sanjeev Singh, learned counsel appearing for the 1 st Respondent has submitted that in view of the fact that the petitioner did not honour the earlier settlement dated 17.11.2020, he would now be liable to pay the entire dues along with upto date interest. He has, however, submitted in case, a fresh proposal is given along with the bank draft of Rs.2 crores on or before 05.05.2021, the respondent-Finance Company would be agreeable to consider the proposal for settlement of dues. In view of the aforesaid facts and circumstances, we dispose of this special leave petition with the direction that in case, the petitioner-Company deposits a bank draft of Rs.2 crores with the 1st Respondent on or before 05.05.2021 along with a fresh proposal for settlement of dues, the said proposal shall be considered by 1st Respondent sympathetically as expeditiously as possible, preferably within a period of two weeks from the filing of such application. It is

> further provided that in case, the petitioner-Company does not deposit the bank draft of Rs.2 crores on or before 05.05.2021, this special leave petition shall stand dismissed. With the aforesaid direction, the special leave petition shall stand disposed of. Pending application(s), if any, shall also stand disposed of."

9. A perusal of the communication dated 06.09.2021 (Annexure A-2) would go on to show that respondent No.5 only offered a demand draft of Rs.1,30,00,000/- (Rs.1.3 crores) before the Bank, which accordingly had not agreed to accept the same. The formal rejection was also done on 28.09.2021 (Annexure A-3) by communicating the same to the proprietor of the firm and his family members.

10. Keeping in view the above, it is apparent that the respondents themselves have to be faulted for violating of five undertaking before this Court and even before the Apex Court. No further indulgence is liable to be granted, on account of the huge amount outstanding which is now pending against the petitioner to the tune of over Rs.8 crores. They are already keeping the possession for over two years of the property, by which the petitioner-financial institution would have earned handsome remuneration, if the same had been leased out, as it is situated at a prime location in Gurugram.

11. Accordingly, the present petition is disposed of with directions to the respondent No.1-District Magistrate, Gurugram to ensure that the physical possession of the property in question is

handed over to the authorized person of the petitioner within a week from today whether it is from the private respondents or their agents.

12. Needless to say that the District Magistrate shall take appropriate police help at the time of handing over the physical possession of the property in question to the authorized person of the petitioner, the financial institution. Similarly, the rights of any parties to the said property will be adjudicated upon by the Tribunal, before whom proceedings are already pending as we have not decided on the said issue on merits.

13. The report of the District Magistrate shall be submitted with the Registrar General of this Court, within a week thereafter.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

December 06, 2021
Naveen

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No