IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(225) **CWP-2233-2020(O&M)**
Date of Decision: 13.05.2024

M/s Ganpati Wool Traders & another --Petitioners

Versus

UCO Bank & others --Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL.
HON'BLE MS. JUSTICE AMARJOT BHATTI.

Present:- Mr. R.S. Manhas, Advocate for petitioners.

Mr. Saurabh Goel, Advocate for respondent no.1 (through V.C.).

Mr. R.S. Pandher, Sr. DAG, Punjab.

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LISA GILL.J (Oral)

Prayer in this petition is for directing respondents not to take physical possession of the dwelling house-cum-shop bearing no. B-X-142 Mochpura Bazaar, Ludhiana as the petitioners have already deposited substantial outstanding amounts. Respondent no.1 is claimed to have initiated action under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (for short SARFAESI Act) in an unjustified and erroneous manner.

2. Learned counsel for the petitioners submits that petitioner no.2, is the sole proprietor of petitioner no.1-firm. CC limit of Rs.12.50 lakh was availed of in the year 2000-2001 which was increased from time to time and ultimately to Rs.58 lakhs in the year 2012. Financial indiscipline occurred due to recession in the hosiery business in the year 2016 due to which

petitioner could not pay the loan amount and petitioner's account was declared NPA on 31.03.2016. The outstanding balance due to respondent-Bank including interest was Rs.58,13,169/- up to 31.08.2015. Notice dated 27.04.2016 under Section 13(2) of the SARFAESI Act was issued. It is submitted that petitioner represented to the respondent-Bank that due to circumstances beyond control, the amount in question could not be deposited and matter may be settled. One Time Settlement was sanctioned in favour of petitioners on 22.09.2017, according to which petitioner was to deposit a sum of Rs.58 lakhs. Petitioner deposited an amount of Rs.22,39,220/- but a sum of Rs.12.56 lacs could not be paid within stipulated period. It is submitted that petitioner no.2 is disabled from lower and upper limbs and is 70% disabled besides having dependent wife, two school going minor children and old aged parents. Ultimately notice dated 1.11.2019 was issued by Tehsildar, Dehlon, District Ludhiana pursuant to order passed by the District Magistrate, Ludhiana.

3. Petitioners earlier filed CWP-10738-2018 which was disposed of vide order dated 01.05.2018 with the observations that Court was not inclined to interfere in the matter in view of persistent default on the part of petitioners and the petitioners, if so advised, may approach the Bank with a request to reschedule the payments and if such a request is found bona fide, Bank may consider the same sympathetically.

4. Learned counsel for the petitioners is unable to point out any document on record to indicate that after passing of order dated 01.05.2018 petitioners ever approached the respondent-Bank with a schedule for repayment of the amount. Learned counsel refers to a Chart/Table dated 14.02.2022 stated to have been issued by the Bank itself whereby

petitioners have deposited some amount up to January, 2022 which has been duly accepted by the Bank. It is submitted that in this view of the matter, the period of One Time Settlement dated 22.09.2017 should be extended and petitioners should be permitted to deposit the amount as may still be due.

5. It is apparent that the present writ petition is merely a futile attempt on the part of the petitioner to stall recovery proceedings. Petitioner was found to be in persistent default even as on 01.05.2018 as is recorded in the order passed while disposing of CWP-10738-2018. Argument raised that till date petitioners have deposited substantial amount of the One Time Settlement which was sanctioned in September, 2019, is an argument completely devoid of any merit. It is a settled position that a borrower/guarantor does not have a vested right to a settlement or for extension of the period of One Time Settlement (OTS). To say that as only a sum of Rs.12.56 lacs remains to be deposited out of the sum of Rs.58 lacs which was agreed upon as a One time Settlement way back in September, 2019, therefore, there should be interference in this writ petition, is absolutely misconceived. It is useful to refer to judgement of the Hon'ble Supreme Court in case of **State Bank of India Vs. Arvindra Electronics Pvt. Ltd., 2023(1) SCC 540**, wherein it has been held that the Bank can mutually agree to extend the time which is permissible under Section 62 of the Indian Contract Act. However, the borrower as a matter of right, cannot claim further extension and negative discrimination cannot be claimed either. The borrower has to establish a right in its favour to claim extension. Thus, the period of OTS having come to an end with the stipulated amount not being deposited, petitioner is not vested with any right to seek extension

thereof by virtue of unilateral deposit of amount(s) at its will.

6. Keeping in view the facts and circumstances of the matter as above, no ground whatsoever is made out for interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

7. Accordingly, present writ petition is dismissed with liberty to petitioners to avail statutory remedies as may be available to them in accordance with law for redressal of their grievance(s) in respect to proceedings under Section 14 of SARFAESI Act. It is also open to parties to arrive at any mutually acceptable settlement.

8. Pending civil miscellaneous applications, if any, stand disposed of accordingly.

(LISA GILL)
JUDGE

13.05.2024
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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No