(2018) 10 P&H CK 0216

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No.26102 of 2017

Ashok Kumar & Anr	APPELLANT
Vs	
State Of Haryana And Ors	RESPONDENT

Date of Decision : 01-10-2018

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(2), 14

Citation : (2018) 10 P&H CK 0216

Hon'ble Judges : Ajay Kumar Mittal, J;Avneesh Jhingan, J

Bench : Division Bench

Advocate : Deepak Agnihotri, Daisy Sharma, Shekhar Verma

Final Decision : Disposed off

Judgement

1. The present writ petition has been filed seeking quashing of notice issued by Tehsildar-cum-Duty Magistrate, Nilokheri, District Karnal, published in

newspaper on 11.09.2017 (Annexure P-2), directing the petitioners to handover the possession of the mortgaged property.

2. State of Haryana; the District Magistrate, Karnal; the Tehsildar-cum-Duty Magistrate, Nilokheri, District Karnal; Housing Development Finance

Corporation Limited (HDFC Ltd.), registered Office, Mumbai; Housing Development Finance Corporation Limited (HDFC Bank Ltd.), regional

Office, Chandigarh and Housing Development Finance Corporation Limited (HDFC Bank Ltd.), branch office Nilokheri, District Karnal have been

arrayed as respondents No.1 to 6, respectively, in the writ petition.

3. The petitioners took a housing loan of `14 lakhs from respondent No.4 to 6. The agreed rate of interest was 10.40% per annum. The loan was to be

repaid in equal monthly installments (EMI's) of `15,476/- each. The loan was to be repaid in a period of 15 years. The petitioners availed another

housing loan of `6 lakhs from respondent No.4 to 6. The agreed rate of interest was 12.75% per annum. The loan was to be repaid in 15 years in

EMI's of `7,494/-each. In order to secure the loans, House bearing MC No.15/ P-2A, Plot No.4 (measuring 150 sq. yards) located in Shanti Nagar,

Ward No.2, Neelokheri, Tehsil and District Karnal was mortgaged.

4. There was default in repayment of installments. The petitioners made a request to the bank to re-schedule the installments. Request was not

acceded to and recovery proceedings were initiated under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002 (for brevity 'the Act'). Notice under Section 13(2) of the Act was issued on 07.10.2015. As per the notice, there was due amount

of `20,27,785/- as on 31.07.2015. The Bank approached respondent No.2 under Section 14 of the Act and order was passed on 17.10.2016 for taking

over possession of the mortgaged property. The notice was published in the newspaper for taking over possession of the mortgaged property.

Aggrieved of the recovery proceedings, the present writ petition has been filed.

5. On 15.11.2017, the counsel for the petitioners contended that the petitioners have already deposited an amount of `1 lakh and they would deposit

another sum of `1 lakh within one week and will clear the defaulted amount of overdue installments thereafter. Notice of motion was issued to

respondent No.6 only and subject to petitioners' depositing `1 lakh, status quo regarding possession of the property in dispute was ordered to be

maintained.

6. After complying with the undertaking given on 15.11.2017, during the pendency of the writ petition, petitioners deposited another sum of `50,000/-.

On 20.08.2018, counsel for the petitioners undertook that a demand draft of `1 lakh would be produced to show their bona fides.

7. Today, a demand draft of `1 lakh has been produced in the Court and the same has been handed over to the learned counsel appearing for the

respondent-bank.

8. Heard learned counsel for the parties.

9. Learned counsel for the petitioners contended that demand draft of `1 lakh produced today may be adjusted towards the overdue amount. The

petitioners undertake to clear the defaulted installments alongwith reasonable interest and they would also deposit the installments accruing upto

30.11.2018. It was submitted that the petitioners would pay three monthly installments in advance.

10. Learned counsel for the respondent-bank argued that the account has already been declared as Non-Performing Asset (NPA) and moreover, the

petitioners have not approached the bank for regularizing the account.

11. It would be appropriate to note here that classifying of the account as NPA is not an irreversible act, until and unless the facts of the individual

case warrants otherwise. On payment of overdue amount alongwith interest for the delayed period, the account can be regularized.

12. The Division Bench of this Court in the case of M/s. Oswal Spinning & Weaving Mills Ltd. vs. Reserve Bank of India and others, CWP No.13888

of 2015, in its decision dated 11.04.2016, relying upon Clauses 4.2.5 and 4.2.7 of the Master Circular of Reserve Bank of India and concurring with

the decision of the Division Bench of Andhra Pradesh High Court in the case of Sravan Dall Mill P. Limited Vs. Central Bank of India and another

2010 AIR (AP) 35 held as under:

â??9. Clause 4.2.5 which falls for our consideration is similar to Clause 4.2.4 which fell for the consideration of the Andhra Pradesh High Court. We

are in respectful agreement with these observations in the judgment. The entire purpose of the circular and the policy contained therein would be

defeated if a view to the contrary is taken. The circular does not condemn an account as an NPA merely on account of non-payment. Detailed

parameters are provided in the circular for an account to be classified an NPA. Further, the accounts of various organizations have been categorized

differently. In Clause-4, for instance, banks are required to classify non-NPAs into three categories, namely, sub-standard assets, doubtful assets and

loss assets, based on the period for which the assets have remained non-performing and the realisability of the dues. This is an indication against the

view that once an account is considered NPA it remains a NPA throughout irrespective of anything.

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. This is clear from the opening

words of the first sentence of Clause 4.2.5 of the Master Circular â?" â??If arrears of interest and principal are paid by the borrower â?¦.â?. These

words clearly indicate that payment of the amounts due at a particular point of time towards interest and principal is sufficient for the account not to

be treated any longer as an NPA and to have the same classified as a standard account. If it were otherwise, the clause would have been worded

entirely differently. It would have required the borrower to pay all the dues of the lender. Indeed, in that event, there would be no question of

reclassifying the account from an NPA to a standard account for upon repayment the account would stand closed. Clause 4.2.5 contemplates the

continuation of the accounts and not the closure thereof.â??

13. Keeping in view the above decision of the Division Bench of this Court and the undertaking given by the petitioners, the writ petition is disposed of

with the following directions:-

(i) Demand draft of `1 lakh handed over to the learned counsel for the bank today, shall be adjusted against the overdue amounts.

(ii) The petitioners shall, before 30.11.2018, clear the overdue amount alongwith interest for the defaulted period thereon. The installments falling due

upto 30.11.2018 and three installments in advance will also be deposited.

(iii) The bank shall charge interest for the delayed period of installments at the agreed rate of 10.40% p.a. in the loan account of Rs.14 lakhs and

interest at the rate of 12.75% p.a. in the loan account of `6 lakhs. No separate penal interest shall be charged by the bank.

(iv) On the payment of overdue amounts alongwith interest, the bank shall regularize the loan accounts.

(v) The interim protection granted by this Court vide order dated 15.11.2017 i.e. â??Status quo regarding the possession of the mortgaged property

shall be maintainedâ??, shall continue upto 30.11.2018.

14. However, it is clarified that in case of default by the petitioners to adhere to the undertaking given in this Court or in making payment of

installments due in future, the bank shall be at liberty to proceed in accordance with law.