(2021) 12 SHI CK 0069

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 2511 Of 2019

Brij Lal — APPELLANT

Vs

State Bank Of India And Others — RESPONDENT

Date of Decision : 22-12-2021

Acts Referred:

Securitization And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(2)

Citation : (2021) 12 SHI CK 0069

Hon'ble Judges : Mohammad Rafiq, CJ;Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Virender Thakur, Arvind Sharma, Ashok Sharma, Ritta Goswami

Final Decision : Disposed Of

Judgement

Mohammad Rafiq, CJ

1. This writ petition has been filed by petitioner-Brij Lal assailing the demand notice, dated 7th January, 2019 issued to him by respondent-Bank under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, with the prayer that the respondents-Bank be directed to consider the application of the petitioner (Annexure P-2), dated 2nd August, 2019 and grant at least one year to him to repay the loan amount.

2. In the course of argument, the learned counsel for the petitioner argued that the respondents-Bank had, on his request, offered him to settle the loan account by One Time Settlement by paying a sum of Rs. 15,18,067.48 as against the due amount of Rs. 20,24,089.97, as on 31st March, 2020, on the condition that the application for One Time Settlement shall be processed only on deposit of minimum 5% of the OTS Amount. Another 10% of the OTS Amount was to be deposited as first installment within thirty days.

3. The learned counsel for the petitioner submitted that the petitioner was facing

immense financial difficulty at that time and, therefore, he could not avail all the opportunities given to him by the respondents-Bank. He subsequently submitted a representation to the respondents-Bank on 30th March, 2021 (Annexure A-5), for settlement of loan under One Time Settlement Scheme, but, the same was rejected vide communication, dated 2nd April, 2021 (Annexure A-6). The petitioner again sent a representation to the respondents-Bank on 23rd November, 2021 (Annexure A-9), praying for One Time Settlement of his loan account as per the offer earlier given on 19th October, 2020, but the respondents-Bank has again rejected the representation of the petitioner vide communication, dated 29th November, 2021.

4. Mr. Arvind Sharma, learned counsel appearing for the respondents-Bank, submitted that despite repeated opportunities given to the petitioner, he failed to avail of the One Time Settlement Scheme and did not even deposit 5% OTS Amount. He further submitted that as of now, there is no such One Time Settlement Scheme available, but, he can always apply under General Settlement Scheme by depositing 5% up-front amount of his offer, which shall be considered by the respondents-Bank, as per relevant instructions.

5. Considering the fact that despite repeated opportunities granted to the petitioner, he has failed to avail the benefit of the earlier One Time Settlement Scheme, but, at the same time, taking into account the submission of the learned counsel appearing for the respondents-Bank that the petitioner can still approach the respondents-Bank, the petitioner, in order to prove his bona fide, has to deposit 5% of the amount, which the petitioner offers to pay in lieu of the total outstanding amount due in his loan account.

6. Accordingly, we dispose of this writ petition with the observation that the petitioner may approach the respondents- Bank by depositing 5% of the amount that he offers to pay to them for settlement of outstanding amount in his loan account. If any such offer is made, the respondents-Bank shall consider the same and communicate the decision to the petitioner.

7. At this stage, learned counsel for the petitioner submitted that he is agreeable to deposit a sum of Rs. 5,00,000/- within three days and that respondents-Bank may be restrained from putting the house of the petitioner to auction till they take a decision on the offer of the petitioner to be given by way of representation/ application to settle the loan account under prevalent Settlement Scheme.

8. In view of the above, it is directed that in case the petitioner, as per the offer, deposits a sum of Rs. 5,00,000/- within three days, the respondents-Bank shall not proceed to put his house to auction and take a decision on his offer within one month.

9. With these directions, the writ petition is disposed of, so also the pending miscellaneous applications, if any.

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