(2019) 01 P&H CK 0447

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 24139, 21061 Of 2017 (O&M)

M/S Behl Roller Flour Mills & Ors. APPELLANT

Vs

Punjab & Sind Bank And Ors. RESPONDENT

Date of Decision : 14-01-2019

Acts Referred:

Securitization And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(2), 14
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 01 P&H CK 0447

Hon'ble Judges : Ajay Kumar Mittal, J;Manjari Nehru Kaul, J

Bench : Division Bench

Advocate : Aalok Jagga, R.S.Kakkar, A.S.Kakkar

Final Decision : Disposed Off

Judgement

Manjari Nehru Kaul, J

This order of mine will dispose of writ petitions i.e. CWP Nos.24139 of 2017 and 21061 of 2018 as according to learned counsel for the petitioners the issue involved in the present petitions is similar. Brief facts of the case are taken from CWP No.24139 of 2017.

1. The instant petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing the impugned demand notice dated 12.06.2017 (Annexure P-3) issued under Section 13(2) and possession notice dated 04.10.2017 (Annexure P-5) issued under Section 13(4) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred as 'the Act').

2. The petitioner No.1 is a firm and has been running a flour mill at Guru Harsahai. It availed a Term Loan amounting to Rs 2 crores and Cash Credit Limit of Rs 1.95 crores from respondent-Bank in the year 2014. The said loan facilities were availed from the respondent-bank by executing loan agreement in respect

of the following properties:

i) Land measuring 4 kanals being khasra No.125 killa No.23 min west (4-0), Khewat No.1249, Khatoni No.1772 as per jamabandi for the year 2008-09 situated at Guruharsahai Shamali, Tehsil Guruharsahai, District Ferozepur vide sale deed bearing wasika No.888 dated 10.06.2014.

ii)Land measuring 6 kanals being khasra No.15, killa No.23/2 min west (3-0), and 18 min west (3-0), khewat No.1249, Khatoni No.1772 as per jamabandi for the year 2008-09 situated at Guruharsahai Shamali, Tehsil Guruharsahai, District Ferozepur vide sale deed bearing wasika No.1950 dated 15.10.2014.

iii)Shop/land measuring 5 marla i.e. ½ share of 10 marlas bearing Khasra No.241, killa No.19/9 (0-10-0) situated at Guruharsahai Darmiani, Tehsil Guruharsahai, District Ferozepur vide sale deed bearing wasika No.2829 dated 02.03.1989.

iv)Shop/land measuring 5 sarsai i.e. 5/6 share of 6 sarsai bearing khasra No.1477/44/2 (0-0-6) situated at Mandi Guruharsahai, Tehsil Guruharsahai District Ferozepur vide sale deed bearing wasika No.2168 dated 06.12.2001.

v) Shop/land measuring 1 sarsai i.e. 1/5 share of 6 sarsai bearing khasra No.1477/44/2(0-0-6) situated at Mandi Guruharsahai, Tehsil Guruharsahai District Ferozepur vide sale deed bearing wasika No.3092 dated 13.03.2002.

vi)Shop/land measuring 5 sarsai (7'.9' x 15') i..e 10/24 share of 1 marla 3 sarsai beairng Khasra No.1477/45/(0-1-3) situated at Mandi Guruharsahai, Tehsil Guruharsahai District Ferozepur vide sale deed bearing wasika No.1657 dated 04.06.2003.

vii)Land measuring 10 marla bearing No.257 killa No.3/6(0-5), 3/7(0-5) situated at Guruharsahai Darmiani, Tehsil Guruharsahai District Ferozepur vide sale deed bearing wasika No.2331 dated 22.02.1994.

viii)Land measuring 18 marla 8 sarsai being 3/5 share of the land measuring 1 kanal 11 marla 5½ sarsai, the detail of which is as under:

a) Land measuring 7 marla 1½ sarsai being 129/200 share of land measuring 11 marla 1 sarsai bearing khasra No.241 killa No.11/8(0-2-0), 11/12(0-6-5), 11/13(0-2-0), 11/14(0-0-5) comprised of khewat No.855 khatoni No.1114.

b) Land measuring 1 kanal 4 marla 4 sarsai being 220/946 share of land measuring 5 kanals 5 marla 1 sarsai bearing khasra No.241, killa No.11/1(5-5-1), khewat No.855 khatoni No.1109 as per jamabandi for the year 2008-09 situated at Guruharsahai Darmiani, Tehsil Guruharsahai District Ferozepur.

ix) Shop/land measuring 1 marla being 9/180 share of land measuring 1 kanla bearing khasra No.241, killa No.19/5(0-10), situated at Guruharsahai Darmiani, Tehsil Guruharsahai District Ferozepur vide sale deed bearing wasika No.1822 dated 03.11.2008.

3. According to the petitioners, due to non-recovery of amount from the market, they could not pay the installments in time and thus, their loan accounts were classified as Non Performing Asset (in short 'NPA') on 31.03.2017. Thereafter, the bank issued a notice dated 13.06.2017 under Section 13(2) of the Act and asked the petitioners to make payment of Rs 2,02,91,150/- towards Cash Credit Limit and Rs 1,07,01,926/- towards term loan as on 31.03.2017. After the issuance of notice under Section 13(2) of the Act, the petitioners deposited an amount of Rs 16,55,000/- with the respondent-Bank as is referred to in para 6 of the writ petition. However, the respondent-bank issued possession notice dated 04.10.2017 under Section 13(4) of the Act whereby symbolic possession of the two mortgaged properties was taken. Feeling aggrieved, the petitioners filed the present writ petition.

4. Learned counsel for the petitioners submitted that the petitioners deposited an amount of Rs 20 lakhs on 11.12.2018 to show their bonafides and were ready and willing to clear the outstanding dues or to regularize their accounts within a reasonable period.

5. After hearing learned counsel for the petitioners, perusing the petition and without expressing any opinion on the merits of the case, the present writ petition is disposed of with the following directions:

1. The petitioners shall approach the respondent-bank within one month from today by filing a detailed and comprehensive representation for clearing the outstanding dues or to regularize the loan accounts.

2. Respondent-bank shall consider the representation submitted by the petitioners sympathetically in accordance with law, after affording an opportunity of hearing to the petitioners and pass a speaking order.

3. The decision on the representation shall be taken at the earliest by the respondent-bank but not later than two months from the receipt of such representation.

4. It is clarified that in case the petitioners fail to submit their representation within the specified time, the respondent-bank would be at liberty to proceed in accordance with law.

6. The interim protection granted by this court vide order dated 25.10.2017 shall be maintained till a decision is taken by the respondent-bank on the representation submitted by the petitioners. However, it is clarified that the interim protection shall not be construed as an expression of opinion on the merits of the case by this Court.