(2018) 07 P&H CK 0186

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 20733 Of 2017

M/S Om Sai Enterprises And Another — APPELLANT

Vs

Vijaya Bank And Others @Hash — RESPONDENT

Date of Decision : 26-07-2018

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

Citation : (2018) 07 P&H CK 0186

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

Bench : Division Bench

Advocate : Rajesh Gupta, Gaurav Goyal

Final Decision : Dismissed

Judgement

The present writ petition has been filed seeking quashing of notice dated 18.08.2017 (Annexure P-12) vide which respondent No.3 sought police help to take physical possession of mortgaged properties. Further, prayer is for quashing of proceedings of taking actual physical possession.

In the present writ petition, Vijaya Bank, Ambala Cantt.; District Magistrate, Ambala; Block Development and Panchayat Officer, Ambala-1; Superintendent of Police, Ambala and Station House Officer, Police Station Baldev Nagar, Ambala Cantt. have been arrayed as respondents No.1 to 5 respectively.

Petitioner No.1 is a sole proprietary concern and petitioner No.2 Sh.Vishal Saini is the sole proprietor.

The petitioners availed two loan facilities from respondent No.1 i.e. one cash credit limit of Rs.19,50,000/-and a housing loan of Rs.19,88,000/-. In order to secure the loans Shop No.1246A/1177, Block No.1, Spatu Road, Kaith Majri, Ambala City and House No.2055/95C (East Part), Block No.10, Ward No.10, Model Gram, Mandoaur, Naraingarh Road, Ambala City were mortgaged.

Both the loan accounts became irregular and the bank issued a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act'). As per the notices issued, there was an amount due of Rs.22,25,164/- as on 30.06.2015 in cash credit limit and an amount due of Rs.19,98,516/- as on 26.06.2015 for the housing loan. Thereafter, the respondent-bank published a public notice in the newspaper for taking physical possession of the properties.

Feeling aggrieved, the wife of petitioner No.2 filed SA No.105 of 2016 before Debt Recovery Tribunal-I, Chandigarh (for short, 'DRT'). DRT passed an interim protection on 27.04.2016 subject to the condition that petitioners shall deposit Rs.2 lakhs. The said amount was deposited. One time settlement proposal was given by the petitioners but same was rejected by the bank vide communication dated 20.05.2016. DRT disposed of SA authorising the bank to proceed in accordance with law and the interim protection was vacated.

Thereafter, the petitioners again approached the bank for one time settlement of cash credit limit. The said proposal was not accepted by the bank. The same was rejected vide letter dated 24.08.2017. Thereafter another proposal of one time settlement was given on 04.09.2017.

Mere proposals were being given by the petitioners for settlement but there was no repayment of the amount due. The bank proceeded to take physical possession of the mortgaged properties. An application under Section 14 of the SARFAESI Act was allowed by District Magistrate, Ambala on 25.07.2017 and the Block Development and Panchayat Officer, Ambala-I was appointed as Duty Magistrate to take physical possession of the properties. A letter was written by Block Development and Panchayat Officer, Ambala-I to the Superintendent of Police, Ambala on 18.08.2017 seeking police help for taking physical possession of the property.

At this stage, the present petition was filed. Notice of motion was issued in the writ petition as the petitioners showed their willingness to deposit a sum of Rs.7 lacs in cash credit limit account within 10 days and pay a substantial amount subsequently to clear the amount due from the petitioners either in case of acceptance of OTS proposal or in absence thereof. Status quo regarding possession of the property in dispute was granted.

On the next date of hearing i.e. 17.11.2017, learned counsel for the bank submitted that the petitioners have deposited Rs.7 lacs and in case, if the petitioners pay the amount due in cash credit account, their housing loan shall be regularised. Learned counsel for the petitioners submitted that the petitioners will pay a sum of Rs.3 lacs per month to square up the outstanding cash credit account. It was further submitted that upto date installments of housing loan have been paid.

Today, on a pointed query learned counsel for the petitioners, submitted that the petitioners have not complied with their undertaking given on 17.11.2017 and only an amount of Rs.4 lakhs has been deposited thereafter.

The petition filed by the petitioners lacks bona fide. The entire endeavour appears to prolong the proceedings rather than to settle the dispute. No case is made out for interference by this Court in exercise of writ jurisdiction under Articles 226 of Constitution of India. However, we hasten to add that the petitioners have efficacious alternative remedies available to them. Petitioners are relegated to avail alternative remedies.

The writ petition is hereby dismissed.

