



OTS - If petitioners have not been able to make any payment ever since the proceedings under Sarfaesi were initiated in 2017 till 2021, the petitioners cannot get any relief from this Court on the basis of sympathy. 2022 PLRonline 5454

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## **RIJU MUKHERJEE v. THE DISTRICT MAGISTRATE, GURUGRAM (HARYANA),2022-1)205 PLR 443**

[punjab and haryana](#) HIGH COURT

Before: Mr. Justice M.S. Ramachandra Rao and Mr. Justice Jasjit Singh Bedi.

RIJU MUKHERJEE And Another - Petitioners,

Versus

THE DISTRICT MAGISTRATE, GURUGRAM (HARYANA) And Another - Respondents.

CWP No. 21825 of 2021

**ots - Petitioners having borrowed the [loan](#), it was the duty of the petitioners to [service](#) the loan, and if the petitioners have not been able to make any payment ever since the proceedings under Section 13 (2) of the Act of 2002 were initiated on 15.05.2017 till 2021, the petitioners cannot get any relief from this Court on the basis of sympathy - Banking - One time [settlement](#).**

*Mr. Rajesh Arora, for the petitioners. (Through Video Conference)*

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**M.S. Ramachandra Rao, J. (Oral) - (29<sup>th</sup> October, 2021)** - In this [writ](#) Petition, the petitioners seek the Writ of Certiorari for [quashing](#) the notice dt.15.05.2017 and also the subsequent notice dt. 08.08.2017 issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security [interest](#) Act, 2002 (for short "the Act"), demanding the petitioners to pay the housing loan dues of Rs. 28,62,583/-. They are also challenging the notice issued under Rule 8(1) and 8(2) of the Security Interest (Enforcement) Rules, 2002 (for short "the Rules") which is placed on the outer door of the petitioners and the subsequent notice dt. 05.10.2021 issued by respondent No.1 under Section 14 of the Act.

2. The petitioners admittedly availed housing loan facility of Rs. 19,25,000/- from respondent No.2 and another loan of Rs. 6,50,000/- repayable in 15 years on the basis of security of [title](#) deed of a plot measuring 45 sq. yards in Khara No.271/1 situated within the revenue estate of Village Bhimgarh Kheri, District Gurugram, and also another sale deed dt.28.10.2013.

3. Since the petitioners were not making payment of the monthly installments and were irregular in servicing the loan, the petitioners' loan accounts were classified as Non Performing Assets ([npa](#)) on 15.05.2017, and proceedings were initiated under Section 13(2) of the Act on 15.05.2017 and 08.08.2017. The petitioners replied to the same through letter dt. 03.08.2017 and 20.09.2017, refuting the contentions of respondent No.2.

4. The petitioners also approached the Civil Court for relief but the Civil Court held that the Civil Suit was not maintainable and returned the plaint through order dt. 05.02.2020.

5. Respondent No.2 then issued notice on 08.10.2018 invoking Rule 8(1) of the Rules, demanding payment within 60 days. It is not in dispute that the matter had been referred to the Lok Adalat also to explore the possibility of a settlement between the parties, but respondent No.2 had insisted on full payment, and therefore, no settlement took place, and the mediation failed.



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6. The only contention of the petitioners is that they have made a proposal for OTS and if sufficient time is granted, they would repay the loan.

7. The petitioners contend that due to causes like demonetization, implementation of GST etc., the petitioners' business is under loss and if time is granted to them to clear the loan, they would repay the loan.

8. We are unable to accept the plea of the petitioners for the reason that having borrowed the loan, it was the duty of the petitioners to service the loan, and if the petitioners have not been able to make any payment ever since the proceedings under Section 13 (2) of the Act of 2002 were initiated on 15.05.2017 till date, the petitioners cannot get any relief from this Court on the basis of sympathy. There is no prima facie case made out in their favour.

9. So we, therefore, do not find any merit in this Writ Petition and the same is accordingly dismissed in limine with no costs.

**Sd/- Jasjit Singh Bedi, J.**

R.M.S.

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*Petition dismissed.*

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