IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.512 of 2015
Date of Decision: 19.08.2015

Punjab National Bank ....Petitioner

Vs.

Rakesh Kumar ....Respondent

CORAM: HON'BLE MR. JUSTICE K.KANNAN

Present:- Mr.H.K.Ahuja, Advocate for the petitioner.

Mr.V.K.Sandhir, Advocate for respondent.

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K.KANNAN, J. (O&M)

The plaintiff, who purports to hold an agreement of sale from mortgagors has sought for injunction against the bank from selling the property and taking action for recoveries pursuant to the loan. The plaintiff's case was that as per the terms of the agreement of sale executed by the mortgagors, they were bound to clear the mortgage loan and the bank shall not auction the property.

The relief of injunction sought in a way that the bank was restrained from taking possession and bring to sale of what was otherwise possible under Section 13 of the SARFAESI Act. It appears that the plaintiff was making the payment of some instalments of loan and the Court granted injunction and allowed only a portion of the liability to the bank to be satisfied. This order was confirmed in appeal brought by the bank. Bank is still not satisfied, hence the revision petition. Before much of the arguments got under way, the counsel for the respondent says that he will pay the entire loan arrears but the original document entrusted to the bank shall be returned to him. The bank will not give any such assurance even there is no authority from the original mortgagors to hand over the documents to the respondent.

The counsel for the respondent is not prepared to make any payment if the original documents are not returned. I believe that the respondents are asking for the impossible that can expose the bank to action for deficiency of service and breach of duty owed to a customer in handing over the documents who is not authorized. Bank ought not to have any problem on the receipt of any money from any person who is a volunteer but it cannot be compelled to return the document to such failure.

I vacate the order of injunction and clarify that the bank will be competent to take recovery action in the manner possible and which would include to right of action taken under the SARFAESI Act. The impugned order is set aside and the civil revision petition is allowed.

(K.KANNAN)
JUDGE

19.08.2015
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