

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-25465-2014

Date of decision:-27.01.2015

Baljit Kaur and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ashok Saini, Advocate,
for the petitioners.

Mr. Vinod S. Bhardwaj, Additional Advocate General, Punjab.

Mr. Munish Kumar Garg, Advocate,
for Mr. Saurabh Bhardwaj, Advocate,
for respondents No. 3 and 7.

Mr. Rohit Suri, Advocate,
for respondent No. 8.

Mr. A.S. Virk, Advocate,
for respondent No. 9.

* * * *

S.J. VAZIFDAR, A.C.J. (ORAL)

The petitioners seek a writ of certiorari to quash the orders dated 27.02.2014 (Annexure P1) and 27.03.2014 (Annexure P2) respectively passed by the District Magistrate, Mohali under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'the SARFAESI Act').

2. Pursuant to the orders, possession has been taken of the property that the petitioners claim to be the owners of. These orders were passed in proceedings adopted by the respondent No. 3 - Union Bank of India against the respondent No. 6 - Anju Bhardwaj to which the petitioners were not parties. The petitioners' case is that the petitioner No. 1 - Baljit Kaur wife of the petitioner No. 2 - Sukhwinder Singh purchased the property in question on 23.08.2006 and mortgaged the same on 29.03.2007 in favour of the respondent No. 8 - ICICI Bank Limited in respect of the facilities extended by the ICICI Bank Limited in her favour. The petitioners contend that the

original owner i.e. Sanjiv Bhardwaj - respondent No. 4 fraudulently purported to sell the same property in favour of his sister-in-law i.e. Anju Bhardwaj - respondent No. 6 subsequently by a fraudulent deed dated 18.10.2006. The petitioners further contend that relying upon the fraudulent deed dated 18.10.2006, the respondent No. 6 mortgaged the property to the respondent No. 3 - Union Bank of India.

3. It is difficult in a writ petition to decide the questions of fabrication and fraud. In any event, the petitioners have an alternate remedy under the provisions of the SARFAESI Act which ought to be resorted to. The petitioners have filed the civil suit against the respondent No. 6 in which a decree of permanent injunction has been passed.

4. The petitioners also seek an order directing the respondent No. 9 – Senior Superintendent of Police, U.T. Chandigarh to register an FIR against the other respondents. We, however, find that the complaint was filed before the Deputy Commissioner, Mohali, who has not been impleaded. In the event of the petitioners being aggrieved by any action or inaction in respect of the complaint filed before the Deputy Commissioner, Mohali, the petitioners are always at liberty to adopt independent proceedings including for reliefs similar to the ones claimed in the present writ petition regarding registration of an FIR.

5. The writ petition is accordingly disposed of with liberty to adopt appropriate proceedings. Considering the nature of the disputes, we are sure that an application for condonation of delay if filed will be considered by the Tribunal sympathetically.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(AUGUSTINE GEORGE MASIH)
JUDGE

27.01.2015

Amodh