

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

CWP No.3741 of 2015
Date of decision:2.3.2015

Sheshan Kumar

....Petitioner

VERSUS

Debt Recovery Appellate Tribunal and othersRespondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MS. JUSTICE LISA GILL

Present: Mr. Pavan Malik, Advocate for the petitioner.

HEMANT GUPTA, J.(Oral)

The challenge in the present writ petition is an order dated 17.11.2014 (Annexure P-8) passed by the Debts Recovery Appellate Tribunal whereby an appeal filed by the appellant against the order of Debts Recovery Tribunal (for short 'Tribunal') dated 13.02.2014 was dismissed finding no infirmity in the order passed in the proceedings under Section 17 of the Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (for short 'the Act').

The petitioner claims to be purchaser of the property in question from one Ramesh Chand vide registered sale deed dated 03.06.2010. The vendor of the petitioner has earlier stood as a guarantor, by mortgaging the property sold, of the loan raised by M/s Fashion Point. In proceedings under Section 13 of the Act, the property purchased by the petitioner was sought to be put to auction which led the petitioner to invoke the jurisdiction of the Tribunal by way of an application under Section 17 of the Act. The learned

Tribunal declined the application filed by the petitioner after observing so:-

“6. Admittedly mortgage in the present case dated 06.05.2009 (Ann, R/9 to R-13) is prior to alleged sale deed in favour of the applicant dated 03.06.2010 (Ann. A/2). It is settled law that rights mortgagee cannot be curtailed by sale subsequent to mortgage. The respondent bank although negligent in not getting its lien registered in revenue record but same will not affect its right under prior mortgage. The applicant is also negligent as he failed to demand original title deeds from the vendor. Accordingly SA stands dismissed having no merit. SA stands disposed of alongwith pending IAS, if any.”

In appeal against the said order, the appellant undertook to pay Rs.10 lakhs within 30 days on 04.06.2014 but since the petitioner did not make the payment, the appeal was dismissed.

We have heard learned counsel for the petitioner and find no merit in the present writ petition. The petitioner is a purchaser of the property after its mortgage in favour of the bank on 06.05.2009. The petitioner as a successor-in-interest of the guarantor is bound by the terms of the mortgage and the deed of guarantee executed by vendor of the petitioner. The remedy of the petitioner against the alleged fraudulent sale said to be effected by the vendor, lies against the vendor or in the event of payment of the dues of the bank, against the borrower in accordance with law.

In view thereof, we do not find any merit in the present writ petition.

Learned counsel for the petitioner states that the property in question is being put to sale as the bids have to be submitted by today whereas the e-auction is to start on 04.03.2015.

Learned counsel for the petitioner states that the petitioner shall pay half of the due amount that is Rs.20 Lakhs before the start of e-auction and remaining amount within 6 weeks.

Therefore, we order that if the petitioner deposits Rs.20 lakhs on or before the start of e-auction, the sale shall not be confirmed for a period of six weeks to await the payment of the remaining amount by the petitioner. On payment of Rs.20 lakhs on or before the start of e-auction, the Bank shall communicate the due amount which the petitioner is liable to pay within one week so that petitioner is able to discharge the entire liability within six weeks from today. It will be only after deposit of the entire amount claimed by the Bank, the petitioner shall be at liberty to dispute the amount calculated by the Bank in accordance with law. In case of any default, the writ petition shall be deemed to be dismissed.

With this direction and observation, the present writ petition stands disposed of.

(HEMANT GUPTA)
JUDGE

MARCH 2, 2015
‘D. Gulati’

(LISA GILL)
JUDGE