

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

CWP No. 12831 of 2016

DATE OF DECISION : 15.11.2016

M/s Sunglow Properties Private Limited

.... PETITIONER

Versus

State Bank of India and another

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Parveen Kumar, Advocate, for
Mr. Tushar Sharma, Advocate,
for the petitioner.

Mr. Rajneesh Jindal, Advocate,
for the respondent-caveator.

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RAMENDRA JAIN , J.

1. On 31.03.2010, respondent No.1 bank granted Electronic Dealer Financing Scheme (EDFS) facility to M/s Oberoi Cars Pvt. Ltd. (respondent No.2 herein) for a sum of ₹ 14 crores for sale/servicing of TATA and FIAT make passenger vehicles. Vide e-mail dated 26.10.2013 (Annexure P-2), respondent No.1 bank required a collateral security to the extent of 25% of the total amount of ₹ 14 crores from respondent No.2 company for renewal of the EDFs facility. The said e-mail was followed by another e-mail dated 29.10.2014 (Annexure P-3) by respondent No.1 bank. Thereafter, vide letter of arrangement dated 03.11.2014 (Annexure P-4) signed by the parties, including the petitioner company, respondent No.1 bank required additional collateral security for 25% of the total amount, i.e.

₹ 14 crores. Accordingly, the petitioner company submitted title documents in respect of its property measuring 300 square meters, bearing No. 121, Deer Wood, Nirvana Country, South City – II, Gurgaon, as 25% collateral security to the extent of ₹ 3.50 crores, to the entire EDFs facility availed by respondent No.2 company. On 30.06.2015, respondent No.1 bank declared account of respondent No.2 company as Non Performing Asset (NPA) and notice dated 29.07.2015 (Annexure P-5) under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act'), demanding a sum of ₹ 13,70,36,512.97 approximately, was issued. On 29.09.2015, the petitioner company raised legal and factual objections to the said notice, which was replied by respondent No.1 on 09.10.2015. Copies of the objections dated 29.09.2015 and reply dated 09.10.2015 have been collectively annexed with the petition as Annexure P-6. Thereafter, possession notice dated 20.10.2015 (Annexure P-7) for taking over symbolic possession of the mortgaged property was published. Vide e-mail dated 28.10.2015 (Annexure P-8), the petitioner company offered respondent No.1 bank to pay ₹ 3.50 crores. According to the petitioner company, on 05.11.2015, without considering its request, respondent No.1 bank after dispossessing the labourers of the petitioner, locked and sealed the mortgaged property.

2. Aggrieved by the aforesaid action of respondent No.1 bank, the petitioner company filed SA No. 270 of 2015 before the Debts Recovery Tribunal-I, Chandigarh, wherein vide interim order dated 09.12.2015 (Annexure P-9), interim prayer of the petitioner company to allow it to

make payment of ₹ 3.50 crores to respondent No.1 bank and redeem its mortgaged property, was declined, with liberty to the petitioner company to approach the Authorised Officer of the bank with its proposal to clear the dues. The said order dated 09.12.2015 was challenged by the petitioner company by way of Miscellaneous Appeal No. 55 of 2016 before the Debts Recovery Appellate Tribunal, Delhi, which was disposed of in limine vide order dated 12.02.2016 (Annexure P-10), without going into merits of the case, and granting liberty to the petitioner to approach respondent No.1 bank for redemption of the subject property by payment of the amount secured, i.e. ₹ 3.50 crores. Pursuant to the said order, the petitioner company submitted representations dated 07.03.2016 and 25.03.2016 (Annexure P-11 collectively) to respondent No.1 bank for redemption of the subject property by payment of ₹ 3.50 crores, for which the collateral security was offered by the petitioner company. However, vide reply dated 15.03.2016 (Annexure P-12), respondent No.1 refused to redeem the mortgaged property in favour of the petitioner and demanded a sum of ₹ 14,69,19,802/- plus accrued interest and other cost. On 23.05.2016, respondent No.1 bank served 30 days' notice on the petitioner and respondent No.2, fixing a date for on-line auction on 24.06.2016 at 2.00 PM to 3.00 PM. Thereafter, the petitioner submitted representation dated 13.06.2016 (Annexure P-14), which was received by respondent No.1 bank on 16.06.2016, wherein the petitioner reiterated its commitment to clear the liability for which the guarantee was undertaken. However, reply to the same from respondent No.1 was not received by the petitioner company.

3. Hence, by way of the instant writ petition under Articles 226/227 of the Constitution of India, the petitioner sought issuance of a writ in the nature of certiorari to quash the orders dated 09.12.2015 and 12.02.2016 (Annexures P-9 and P-10) passed by Debts Recovery Tribunal-I, Chandigarh and the Debts Recovery Appellate Tribunal, Delhi, respectively. A prayer was also made to quash the auction, which was to be held on 24.06.2016. Further, writ of mandamus was also sought to direct respondent No.1 to release the mortgaged property in favour of the petitioner on payment of ₹ 3.50 crores, i.e. 25% of the total EDFC amount of ₹ 14 crores. The holding of e-auction scheduled for 24.06.2016 and confirmation of sale in pursuance to the same was also prayed to be stayed during the pendency of the writ petition.

4. We have heard learned counsel for the parties and have gone through the impugned orders.

5. A perusal of the impugned order dated 09.12.2015 (Annexure P-9) passed by the Debts Recovery Tribunal – I, Chandigarh, would reveal that an option was given to the petitioner company to approach the respondent No.1 bank for redemption of its property. Without exercising the said option, the petitioner company preferred appeal before the Debts Recovery Appellate Tribunal, Delhi, which too was dismissed vide order dated 12.02.2016, again granting liberty to the petitioner to approach respondent No.1 bank. Instead of approaching the bank, the petitioner company filed the instant petition.

6. During the pendency of the instant writ petition, on 22.07.2016, the petitioner company expressed its readiness to discharge the entire

liability to the extent of ₹ 3.5 crores. To show its bonafide, two demand drafts, drawn in favour of Registrar General of this Court, were produced on 27.10.2016. However, the same were returned to learned counsel for the petitioner with a direction to produce fresh one in the name of the respondent Bank.

7. Today, learned counsel for the petitioner produced two demand drafts bearing Nos. 771508 and 771509 dated 12.11.2016, in the sum of ₹ 1.45 crores and ₹ 5 lacs, respectively, drawn in favour of respondent No.1 bank. Photostat copies of the same are taken on record. However, before the said drafts could be handed over to learned counsel for respondent No.1 bank, learned counsel for the petitioner company took back the same. Thus, it shows the malafide intention of the petitioner company that it is not ready to discharge its liability. In this view of the matter, no discretionary relief can be granted to the petitioner company.

8. Petition is, accordingly, dismissed.

**(RAMENDRA JAIN)
JUDGE**

November 15, 2016
ndj

**(AJAY KUMAR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes