

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 12867 of 2016

Date of Decision: 20.09.2016.

HARINDER KAUR

... Petitioner

VS.

SYNDICATE BANK CLOCK TOWER LUDHIANA AND ORS

..Respondents

CORAM: **HON'BLE MR. AJAY KUMAR MITTAL**
 HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Suvir Sidhu, Advocate,
 for the petitioner.

Mr. K.P.S. Dhillon, Advocate,
for respondent No. 1 alongwith Mr. Satyajeet Kumar,
respondent No. 1, Chief Manager,
Syndicate Bank, Clock Tower, Ludhiana Branch.

Mr. I.S. Ratta, Advocate,
for the respondents No. 3 and 5.

AJAY KUMAR MITTAL, J. (Oral)

Mr. Satyajeet Kumar, Chief Manager, Syndicate Bank, Clock Tower, Ludhiana Branch is present in Court today in compliance to the orders dated 07.09.2016 has filed his affidavit explaining the reasons for non-appearance on August 22, 2016. The same is taken on record.

2. Written statement on behalf of respondents No. 3 and 5 has been filed today in Court and the same is taken on record.

3. The petitioner has approached this Court by way of present writ petition filed under Article 226 of Constitution of India for issuance of a writ of certiorari quashing the possession notice dated 24.05.2016 (*Annexure P-7*) issued by respondent No. 1 on the ground that the same is based on fraud and is, therefore, illegal and devoid of any authority. Further, it is prayed that the

CWP No. 12867 of 2016

operation of order 24.05.2016 (*Annexure P-7*) be stayed alongwith all consequential proceedings, during the pendency of present writ petition.

4. Learned counsel for the petitioner has produced a copy of original sale deed dated 25.03.1986 and the same has been returned to the learned counsel for the petitioner.

5. On the other hand, learned counsel for the respondent-Bank has also produced original sale deed dated 13.12.1984. The photocopy of the same has been retained on record and the original sale deed has been returned to the learned counsel for the respondent-Bank.

6. After perusing the contents of the writ petition and the controversy with regard to the ownership of the disputed property, it would be appropriate that the petitioner is relegated to the alternative remedy of appeal before the Debts Recovery Tribunal (DRT).

7. In view thereof the writ petition is disposed of by permitting the petitioner to avail the alternative remedy of appeal under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the Act') which provides right of appeal for any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer thereunder, may make an application alongwith such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been initiated.

8. Learned counsel for the petitioner submits that since the limitation for filing the appeal had expired, therefore, sometime be allowed to the

CWP No. 12867 of 2016

petitioner to approach the (DRT). However, he prayed that the petitioner shall file an appeal alongwith application for interim protection before the DRT within one month and the same be decided within a time bound manner. It was also prayed that till then interim protection granted by this court be maintained.

9. Learned counsel for the respondents has no objection regarding the acceptance of prayer made by the learned counsel for the petitioner.

10. Accordingly, it is directed that in case, the petitioner files the appeal under Section 17 of the Act before the DRT within 30 days from today, the same shall not be dismissed on the ground of limitation and delay. It is further clarified that in case an application for interim protection is filed alongwith the appeal the same shall be decided by the DRT within next 30 days and till then interim protection granted by this Court shall continued.

11. Needless to say that anything observed hereinbefore or grant of interim stay shall not be taken to be an expression of opinion on the merits of the controversy.

(AJAY KUMAR MITTAL)
JUDGE

September 20, 2016
Suresh Kumar

(KULDIP SINGH)
JUDGE

Whether speaking / reasoned *Yes / No*

Whether Reportable *Yes / No*