IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13999 of 2016
Date of decision: 18.7.2016

Puja Sapra and another

……Petitioners

Vs.

Union of India and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Rahul Sharma, Advocate and
Mr. Jitin Tewathia, Advocate for the petitioners.

Ajay Kumar Mittal,J.

1. The petitioners under Article 226 of the Constitution of India pray for issuance of a writ in the nature of prohibition, prohibiting the respondents from enforcing the order dated 29.3.2016, Annexure P.7 and not to dispossess them from the property in dispute i.e. H.No. ES-135 (DUPLEX) Espace, Nirvana Country, Block R&T, Gurgaon 122002, Haryana till the disposal of application of stay filed by them in appeal under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, "SARFAESI Act") before the Debts Appellate Recovery Tribunal, Delhi (DRAT).

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. In the year 1999, M/s K.T.Holidays Pvt. Limited was formed and at present it has four directors viz. Usha Sapra, Gautam sapra, Arti Sapra and Puja Sapra. All the four Directors had proportionate holding in the company to the extent of 25% shares. They are all family members. Usha Sapra is mother of other three Directors. In the year 2005, the said company entered into an agreement to purchase the property in dispute from M/s Unitech Limited Real Estate Division and bought the same by availing loan from HSBC Bank. The loan was paid back before 11.10.2008. Conveyance deed was executed in favour of M/s K.T.Holidays Pvt. Limited on 14.11.2008. The possession was given to the said company on 28.2.2009. The petitioners started living in the said property w.e.f March 2009. In the year 2009, Gautam Sapra transferred his share in favour of both the petitioners. Consequently, the petitioners' share holding in the company rose to 37.50% each and holding of Usha Sapra remained 25%. In the year 2012, Gautam Sapra, real brother of the petitioners requested the petitioners to put their signatures on application for taking loan of ₹ 40 lacs to start a restaurant in Chennai to which they agreed. Gautam Sapra assured to pay back the loan as he would be using the same for his personal usage. Respondent No.4 bank sanctioned the loan which was utilized by Gautam Sapra. In October 2014, recovery agents of respondent No.4 visited the aforesaid property and informed the petitioners that Gautam Sapra had defaulted in payments. The petitioners intimated Gautam Sapra who was not having good relations with them. He told the petitioners not to bother him in his personal matters. The petitioners tried to get the details from the Bank. They came to know that the bank had issued some loan. In the first week of September 2015, one of the recovery agent of

the Bank visited the petitioners and informed them about the proceedings before the District Magistrate. The petitioners appeared before the said authority. They requested the District Magistrate for supply of the copies of the documents. On 3.11.2015, the respondent Bank gave copy of application of three loans and told the petitioners that they had taken loan for purchasing Flat No.ES-135, Espace, Nirvana Country, Gurgaon. The petitioners were shocked to see that their signatures were forged and they immediately informed the District Magistrate about the forgery. On 30.12.2015, the petitioners sent a notice to the bank through their counsel intimating that their signatures had been forged in the alleged loan applications. The petitioners were further shocked to see the signatures mentioning them on the documents as co-borrowers. According to the petitioners, they never applied for such loans and did not sign the loan applications which were sanctioned on 11.9.2008 for ₹ 1,50,00,000. Aggrieved thereby, the petitioners approached this Court through CWP No.3972 of 2016 which was dismissed as withdrawn with liberty to raise objections in the proceedings pending under Section 14 of the SARFAESI Act. On 26.3.2016, the petitioners lodged a complaint against the Bank and other unknown persons for cheating them. The petitioners filed their objections before the District Magistrate, Gurgaon which were dismissed on 29.3.2016 with a liberty to approach Debts Recovery Tribunal, Chandigarh (DRT). The petitioners challenged the said orders before DRT. Notices were issued to the Bank to file reply. The Bank did not submit the reply. The DRT Chandigarh declined interim relief to the petitioners and fixed the matter for final disposal. On 8.7.2016, the police started harassing the petitioners. The bank staff forced the petitioners to write a letter to the Tehsildar to the effect that they would vacate the premises on 12.7.2016. The petitioners filed appeal under Section

18 of the SARFAESI Act alongwith an application for stay of the impugned order dated 17.5.2016. The petitioners came to know that the DRAT branch at Delhi was lying vacant since 4.4.2016 and the matter fixed at Delhi would be listed before the Kolkata Bench after a period of atleast two weeks. Hence the petitioners are before this Court through the instant writ petition.

3. We have heard learned counsel for the petitioners.

4. It was not disputed that the property in dispute was purchased in the name of M/s K.T.Holidays Pvt. Limited in whose favour a conveyance deed was executed on 14.11.2008. The petitioners have not been shown to be the owners of the property in dispute. In that eventuality, learned counsel for the petitioners was not able to satisfy the Court about the *locus standi* of the petitioners in impugning the order dated 29.3.2016, Annexure P.7. Moreover, the petitioners have already filed an appeal which was stated to be listed before Kolkata Bench after a period of two weeks.

5. In view of the above, we do not find any ground for exercising writ jurisdiction under Article 226 of the Constitution of India. Consequently, the petition stands dismissed.

(Ajay Kumar Mittal)
Judge

July 18, 2016
'gs'

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether reportable Yes/No