

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

**CM No.5654-CWP of 2016 in/and
CWP No.3938 of 2016
Date of Decision : 10.05.2016.**

Vinod Aggarwal and another

.....Petitioners

Versus

**State Bank of Bikaner & Jaipur, Assets Recovery Branch, Ajmal Khan
Road, Karol Bagh, New Delhi**

..... Respondent

**CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI**

**Present : Mr. Ashok Gupta, Advocate for the applicant-petitioner.
Mr. Umang K. Khosla, Advocate for the respondent.**

S.J.VAZIFDAR, ACTING CHIEF JUSTICE (ORAL):

CM No.5654-CWP of 2016

Application is allowed as prayed for. Rejoinder and documents Annexure P-10, P-11 and P-12 are taken on record, subject to all just exceptions.

CWP No.3938 of 2016:

The petitioners have challenged the refusal by the Debt Recovery Appellate Tribunal, Delhi, to grant injunction restraining the respondents from selling the properties in execution of a recovery certificate pending the hearing of the appeal filed by the petitioners against the order of the Debt Recovery Tribunal, Delhi rejecting their objections. The respondent sought to bring to sale the properties in execution of the recovery certificate dated 9.5.1999 for a sum of about ₹39 crores against Hans Raj Garg, Vinod Garg and Smt. Vinita Garg.

2. The petitioners' case is that the properties in question were mortgaged in favour of the Bank of Rajasthan by the said Hans Raj Garg, who was the partner of V.K. Construction. Bank of Rajasthan filed an O.A. before the Debt Recovery Tribunal, Delhi, for the sum due in respect of the facility granted by it to V.K. Construction Works Limited. Bank of Rajasthan Limited being dis-satisfied by the order of the Debt Recovery Tribunal filed Appeal No.32/2006. That appeal was disposed of by an order passed by the Debt Recovery Appellate Tribunal, Delhi dated 31.10.2006. The order records that the defendants therein had agreed to pay the Bank of Rajasthan a sum of ₹ 8 crores together with the interest. Clause 5(b) reads as under:-

5(b) “Property situated in Village Munak, District Sangrur in the State of Punjab and Property bearing No.1142 Sector 15-B Chandigarh will be sold by the Receiver for the balance dues of the Bank to Shri Vijay Kumar Garg or his nominee and the said sale proceeds will be delivered to the Bank who will release the title deeds to the purchaser. The Receiver will issue the necessary sale certificate and confirm the sale and Shri Hans Raj Garg will execute all necessary documents to effect transfer of the property as and when required to do so”.

3. Pursuant to the above, one of the properties was sold to Smt. Champa Garg. Champa Garg was the wife of the said Hans Raj Garg and Vinod Kumar Garg is the son of said Hans Raj Garg. Confirmation order of the sale was passed by the Debt Recovery Appellate Tribunal, Delhi on 30.03.2007, and on the same day the sale certificate was also issued. Thereafter, the property was purportedly, sold for ₹ 2.57 crores. Admittedly, the property was sold by private negotiations between the

receiver and the said Vinod Kumar Garg and Champa Garg and not by public auction.

4. Subsequently, Champa Garg gifted the property to her grandson one Bharat Garg vide gift deed dated 28.06.2007 and Bharat Garg in turn sold the property to the petitioners on 20.09.2010. The petitioners are not related to the said Garg.

5. As we mentioned earlier, an O.A. was filed by the respondent against the said Hans Raj Garg, Vinod and Smt. Vinita to recover a sum of ₹ 39 crores. The recovery certificate issued on 9.5.1999 was in the sum of ₹ 99 crores.

6. The petitioners' claim for interim reliefs in respect of the said property. The respondent, however, contends that the sale pursuant to the order of the Debt Recovery Appellate Tribunal, Delhi dated 31.10.2006, was a sham and the money in fact never belonged to Smt. Champa Devi. They further contend that the property was sold at a gross under valuation only for the purpose of transferring the same from the name of Hans Raj Garg in order to avoid any liability that may be foisted upon them in recovery proceedings by the respondent herein against the said Hans Raj Raj.

7. We do not suggest that the respondent's contentions are not well founded. They may ultimately be upheld. Further, a serious issue arises in this regard including whether the arrangement recorded in the order dated 31.10.2006, passed by the Debt Recovery Tribunal, Delhi is merely a device to defraud the respondent or whether it was a genuine arrangement between the parties therein. Further, it is necessary to consider whether such

a contention is even open so long as the order dated 31.10.2006 remains valid. This issue would be relevant while considering the petitioners' main case that they are *bona fide* purchasers for value and without notice. The validity of the mortgage is also a substantial issue to be tried.

8. In the circumstances, the balance of convenience is clearly in favour of the parties maintaining *status quo* during the pendency of the appeal. If the properties are sold, rights not only of the petitioners but also of third parties would be adversely affected. On the other hand, if the injunction is granted the respondent cannot suffer any prejudice for the properties would still available.

9. In the event of the appeal being allowed and the properties being sold the petitioners would suffer irreparable harm and injury especially on account of the fact that the properties in question is their residence.

10. In the facts and circumstances of the case, the impugned order of the Debt Recovery Appellate Tribunal, Delhi is quashed and set aside. All the parties including the petitioner shall maintain status quo in respect of all the properties till the hearing and final disposal of the appeal pending before the D.R.A.T.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

10.05.2016

Manoj Bhutani

(ARUN PALLI)
JUDGE