IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No. 10405 of 2016
Date of Decision: 20.4.2017

Dayanand Medical College and Hospital Managing Society, Ludhiana.

..Petitioner

versus

Debts Recovery Appellate Tribunal and others ..Respondents

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

Present: Mr. Pankaj Gupta, Advocate, for the petitioner.

Mr. Harsh Garg, Advocate, for respondent no.3.

Mr. Aalok Jagga, Advocate, for respondent no.5.

RAMENDRA JAIN, J.

1. By way of the instant writ petition, the petitioner has prayed for issuance of a writ in the nature of certiorari quashing the order dated June 12, 2015 (Annexure P-6) passed by the learned Debts Recovery Tribunal-II, Chandigarth, orders dated November 06, 2015 (Annexure P-17) and February 11, 2016 (Annexure P-24) passed by the learned Debts Recovery Appellate Tribunal, Delhi and the letter dated March 17, 2016 (Anneuxre P-28) issued by the State Bank of India.

2. Put pithily, respondent no.4, namely, M/s P.I. Jewellers, a

private limited company, initially availed cash credit limit of ₹ 03 crores from the State Bank of India, Ludhiana, which was enhanced from time to time and finally enhanced to ₹ 16 crores on 2.12.2012. Respondent no. 4, to secure the cash credit limit, mortgaged one commercial building in the name of its Director Mr. Aman Dhir and another residential house owned by Surinder Mohan Dhir (respondent no.5). However, when respondent no.4 could not adhere to the financial discipline of the bank, its loan account was declared as Non Performing Asset ("NPA") on 30.6.2013. Finally, to recover its dues, the bank initiated recovery proceedings against respondent no.4 and issued notice dated 20.5.2014 (Annexure P-1) under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "SARFAESI Act") to recover the entire dues along with future interest and expenses against which respondent no.4 filed objections under section 13(3A) of the Act, which were rejected by the bank vide letter dated 27.8.2014. Thereafter, the bank took symbolic possession of both the mortgaged properties on 29.10.2014 and put the same to sale by e-auction fixing the reserve price of residential property at ₹ 6.57 crores (the subject matter of the writ petition). The last date for submission of the bid by the prospective bidders along with their earnest money with deposit of 10% of the reserve price was 8.6.2015. Thereafter, e-auction was conducted on 12.6.2015 under due intimation to the Directors of respondent no.4 and the guarantor, namely, Surinder Mohan Dhir (respondent no.5). In the meantime, the bank approached the District Magistrate, Ludhiana, by way of an application under section 14 of the "SARFAESI Act", to take physical possession of the mortgaged properties which was allowed vide order dated 20.5.2015. On

8.6.2015, the petitioner submitted its bid to the bank to participate in the e-auction process for the purchase of residential property along with earnest money deposit of ₹ 66 lakh. On coming to know that the bank has received bid of the petitioner for the purchase of residential property, respondent no.5 (guarantor) filed Securitisation Application (SA) No. 324 of 2015 before the Learned Debts Recovery Tribunal-II, Chandigarh (for short “the DRT”) without impleading the petitioner as a party-respondent. During the course of hearing of the aforesaid Securitisation Application of respondent no.5, the learned DRT noticed regarding the receipt of bid of the petitioner for a sum of ₹ 6.58 crores against the residential property mortgaged by respondent no.5, who through his counsel offered to deposit a sum of ₹ 6.60 lakhs, i.e., ₹ 2 lakhs more than the bid of the petitioner. Considering this fact, the learned DRT allowed the aforesaid SA of respondent no.5 on 12.6.2015 directing him to deposit a sum of ₹ 67 lakh on or before 15.6. 2015, ₹ 99 lakh on or before 27.6.2015, ₹ 1.65 crores on or before 13.7.2015, ₹ 30 lakh by 24.9.2015 and the balance amount in installments or lumpsum along with simple interest @ 10% latest by March 15,2016 with the rider that in case of default in any of the due agreed payment by respondent no.5, the bank will be at liberty to proceed in accordance with law and respondent no.5 shall have no objection thereafter and in case the entire amount of ₹ 6.60 crores is cleared, the title deeds would be returned to the borrower and his nominee, in accordance with law.

3. It is significant to mention that when on 12.6.2015, the learned DRT allowed the SA No.324 of 2015 and directed respondent no.5 to deposit the amount of ₹ 6.60 crores in the manner in which it is prescribed, the e-auction of the residential house of respondent no.5 was also held in

between 11 AM to 1.00 PM, the same day. In the e-auction, the petitioner gave the bid of ₹ 6.58 crores, which was accepted by the bank. As such, as per terms and conditions of the sale notice, the petitioner further deposited another sum of ₹ 98.70 lakh with the bank by way of RTGS on 12.6.2015 to complete 25% of the bid amount. However, being not satisfied with the order dated 12.6.2015 (Annexure P-6) passed by the DRT, granting nine months' time to respondent no.5 to deposit ₹ 6.60 crores offered by him, the bank filed an appeal before DRAT challenging the said order and simultaneously, asking the petitioner to give an undertaking to deposit the balance 75% of the bid amount within 15 days from the date of decision of the DRT. In appeal, the bank, inter alia, submitted that the procedure adopted by the learned DRT was totally contrary to law, inasmuch as the petitioner, as per the provisions of the SARFAESI Act, was required to deposit the entire bid, within 15 days from the date of confirmation of sale, whereas the learned DRT had granted a period of more than nine months to respondent no. 5 to pay the amount of ₹ 6.60 crores, i.e., just 0.5% higher than the bid amount of the petitioner. The bank also raised a grouse before the learned DRAT that the learned DRT should have ordered inter se bidding between the petitioner and respondent no.5. After hearing the bank, the learned DRAT, vide order dated 7.8.2015 (Annexure P-11), stayed the operation of the order dated 12.6.2015 (Annexure P-6). The DRAT also observed in its aforesaid order that one can understand that if the borrower was ready and willing to deposit the complete amount, he could do so within the time the auction purchaser was expected to deposit this amount. After stay of the operation of order dated 12.6.2015 (Annexure P-6) passed by the DRT, the bank, pursuant to order dated 7.8.2015 (Annexure P-11) passed by the DRAT, called upon the petitioner to pay the balance 75% bid amount of ₹ 6.58 crores within a period of 15 days, which the petitioner deposited within the stipulated time and consequently, the authorised officer of the bank issued a sale certificate of the residential property held by respondent no.5 in favour of the petitioner on 4.9.2015. After issuing sale certificate to the petitioner, the bank took physical possession of the residential property on 9.9.2015 in terms of order dated 20.5.2015 passed by the learned District Magistrate, Ludhiana under section 14 of the SARFAESI Act. After taking physical possession, the bank, vide letter dated 9.9.2015 (Annexure P-13), informed the petitioner on the same day that the physical possession of the residential property can be handed over to it at its convenience. However, respondent no.5 challenged the order dated 07.8.2015 (Annexure P-11) passed by the DRAT by way of Civil Writ Petition No.19168 of 2015 before this court and offered to deposit the entire outstanding amount immediately against his mortgaged residential house. This court recording the aforesaid contention of respondent no.5 that he was ready and willing to deposit the entire outstanding amount by 11.9.2015 itself and had brought one bank draft and a cheque in this regard, issued notice of motion while ordering status quo to be maintained as it existed on the date of passing of the order, i.e., on 7.8.2015. Pursuant thereto, the bank restored the physical possession of the residential house to respondent no.5. In the meanwhile, learned DRAT disposed of Appeal no.246 of 2015 filed by the bank against order dated 12.6.2015 (Annexure P-6) upholding the order passed by the learned DRT, observing that by paying a sum of ₹ 6.60 crores to the bank, respondent no.5 will be able to save his residential property and the bank would recover a bit more amount than the bid received by the bank from the petitioner. The learned DRAT recorded that respondent no.5 had already paid the total amount of ₹ 6.60 crores and directed the bank to return the title deeds of the residential house to respondent no.5. Aggrieved by the said order dated 6.11.2015 (Annexure P-17) passed by the DRAT, the petitioner as well as the bank filed separate writ petitions before this court on 2.12.2015 (Annexure P-18). However, the petitioner, on 07.12.2015, withdrew its writ petition with the direction to first approach the learned DRAT to recall the said order dated 6.11.2015 (Annexure P-17), and thereafter, the petitioner again approached the DRAT and moved an application for impleading the petitioner as party-respondent, in Appeal No.246 of 2015 filed by the bank and for recalling order dated 6.11.2015. In the meantime, Civil Writ Petition No.19168 of 2015 filed by respondent no.5 came up for hearing before this court. Since in view of order dated 6.11.2015 (Annexure P-17) passed by the learned DRAT, the writ petition was rendered infructuous, therefore, the same was dismissed as such. Vide order dated 11.2.2016 (Annexure P-24), the learned DRAT dismissed the application of the petitioner for impleadment of respondent no.5 and recall of the order dated 6.11.2015 on the ground that since the main Appeal no.246 of 2015 filed by the bank had already been dismissed on merits, therefore, no useful purpose would be served in recalling the order dated 6.11.2015. In view of the above factual position, the bank also withdrew its CWP No.25834 of 2015 by filing Civil Misc. Application No.2305 of 2016 and the bank also wrote a letter dated 18.2.2016 to the petitioner, asking it to return the sale certificate issued on 4.9.2015. Thereafter, on 17.3.2016 the bank issued another letter to the petitioner informing that its bid amount of Rs.6.58 crores was kept in two fixed deposit receipts (FDRS) and the lien of the bank was also marked on the said FDRs. However, after the decision of the learned DRAT and this court, the bank, vide letter dated 17.3.3016, informed the petitioner that it (bank) has released the title deeds of the residential property to respondent no.5 and has also cancelled the lien on the two FDRs of the petitioner amounting to Rs.6.58 crores.

4 Learned counsel for the petitioner contended that the impugned order dated 12.6.2015 (Annexure P-6) passed by the learned DRT-II, Chandigarh, granting nine months' time to respondent no.5 to deposit the amount of Rs. 6.60 crores was totally wrong and illegal, in view of the fact that the petitioner had to deposit the entire amount within 15 days from the date of confirmation of its bid. The learned DRT ought to have ordered inter se bidding between the petitioner and respondent no.5 instead of granting nine months' time to respondent no.5. The aforesaid order dated 12.6.2015 (Annexure P-6) has seriously prejudiced the rights of the petitioner as it had already deposited a sum of ₹ 66 lakh on 8.6.2015 for participating in the auction process for the sale of the residential house and further had deposited a sum of ₹ 98.70 lakh on 12.6.2015 itself to complete 25% of the bid amount. The petitioner has further given an undertaking to deposit remaining bid amount after the decision of the DRAT, Delhi. The learned DRT, despite the deposit of the aforementioned huge amount, passed an order dated 12.6.2015 (Annexure P-6) without giving an opportunity of filing reply and hearing to the bank or the petitioner. He further contended that the sale certificate was also issued in favour of the petitioner. From this angle also, the order dated 12.6.2015 (Anneuxre P-6) passed by the learned DRT and affirmed by the order dated 7.8.2015 (Annexure P-11) passed by

the learned DRAT, is wrong and illegal. Therefore, the action of the bank asking the petitioner to return the sale certificate is also illegal and not sustainable in the eyes of law being prejudicial to the rights of the petitioner.

5. Respondent no.5 filed a detailed reply controverting the pleas taken up by the petitioner in the writ petition.

6. After giving our thoughtful considerations to the contentions raised by the learned counsel for the parties, we find that the writ petition, being completely devoid of any merit, is liable to be dismissed for the reasons to follow:-

7. It is pertinent to mention here that the bank, vide its letter dated 9.9.2015 (Annexure P-13), while offering the possession to the petitioner, has categorically mentioned that in case of any adverse order passed by any competent court, the full bid amount, i.e.₹ 6.58 lakh would be refunded and the title of the property will be restored to respondent no.5 (guarantor). Admittedly, on 11.9.2015, this court, in Civil Writ Petition no. 19168 of 2015 filed by respondent no.5, while issuing notice of motion, directed the bank to maintain status quo with regard to possession of the residential property as it existed on the date of passing of the order dated 7.8.2015 (Annexure P-11) by the DRAT. Undisputedly, pursuant thereto, the bank restored the physical possession of the residential property in favour of respondent no.5 being the owner of the residential house. After the payment of ₹ 6.60 crores more than two lakh of the bid amount i.e., ₹ 6.58 crores offered by the petitioner, the sale certificate issued in favour of the petitioner was also cancelled by the bank. The offer of possession given by the bank to the petitioner was conditional, as has been mentioned in the

sale certificate, that in case any adverse order is passed by the competent court, the full bid amount, i.e., ₹ 6.58 crores will be refunded and the title of the property will be restored. The relevant portion of the letter dated 9.9.2015 (Annexure P-13) issued by the State Bank of India is reproduced as under:-

> " Now, physical possession of the property can be handed over to you at your convenience. Further, we advise that on the basis of sale certificate, the ownership of the property can be transferred in the name of DMCH Managing Society. It is pertinent to mention here that the District Magistrate, Ludhiana while passing order dated 02.07.2015 has not given cognizance to the stay taken by the tenant (copy of DM order attached).
>
> In case of any adverse order passed by the competent court, the full bid amount, i.e, Rs.6.58 crores will be refunded and title of the property will be restored."

8 The above factual position tilts equity in favour of respondent no.5 as he had already paid ₹ 02 lakh more than the bid amount of the petitioner, i.e., ₹ 6.58 crores. In law and equity, it is foremost duty of the court to protect the indefeasible rights of a person if he is lawful owner of the property. He can not at all be deprived of his legal right simply on the whims and fancies of the petitioner. Undisputedly, the bank has put the double amount of the petitioner in two fixed deposit receipts earning interest thereon and therefore, in the fitness of the things as also in the interest of justice, while dismissing this writ petition, it is directed that the bank shall refund the entire amount of ₹ 6.58 crores deposited by the petitioner with it along with maturity value, within two months from the

date of passing of this order.

9. The writ petition is, accordingly, dismissed.

(RAMENDRA JAIN)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

20.4.2017
VK

1. Whether speaking/reasoned Yes/No

2. Whether Reportable: Yes/No