

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-13163-2016

Date of decision: 07.03.2017

Ankush Bhalla

..... Petitioner

Versus

Debts Recovery Tribunal-II and others

..... Respondents

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

PRESENT: Mr. Aditya Arya, Advocate for
Mr. Atul Sharma, Advocate for the petitioner.

Mr. Rajinder Goyal, Addl. A.G., Punjab.

Mr. Nitin Grover, Advocate for respondents No. 2 and 3.

Mr. Saajan Singla, Advocate for respondent No. 4.

AJAY KUMAR MITTAL, J. (ORAL)

1. By way of filing the present writ petition under Article 226 of the Constitution of India, the petitioner impugns the order dated 18.03.2016 (Annexure P-1) passed by respondent No. 1-Debts Recovery Tribunal-II, Chandigarh.

2. In view of the order which is to be passed on the basis of consensus between the parties, we do not consider it appropriate to deal with the detailed factual matrix.

3. The primary dispute in the writ petition is with regard to a house measuring 102.66 Sq. yards bearing Khasra No. 55//25/2 situated in

the area of Gumtala Sub Urban, Abadi Sahibjada Jhujhar Singh Avenue, Tehsil and District Amritsar, which was in possession of respondent No. 4. It is the case of the petitioner that respondent-Bank had auctioned this property for non-payment of dues by respondent No. 4 and the said property was purchased by the petitioner in the said auction. The petitioner has claimed that possession of the said property be delivered to him. It was not disputed by the respondent-Bank that an amount of ₹ 3,34,820/- was lying in surplus after settling the borrowed amount against the loan account of respondent No. 4 and the same has been kept in the form of fixed deposit with the bank though it is in the name of respondent No. 4.

4. On 03.02.2017, respondent No. 4 was directed to file an affidavit stating that the property in dispute which has been purchased by the petitioner-auction purchaser is free from all encumbrances and has not been sold by him to anyone else and further that he shall not interfere either in physical possession or in any other manner in the property in dispute. In terms thereof, learned counsel for respondent No. 4 had filed the affidavit of respondent No. 4. In para Nos. 3 and 4 thereof, it has been pleaded as under:-

“3. That the property in dispute measuring 102.66 Sq yard (house) bearing Khasra No. 55//25/2 situated in the area of Gumtala, Sub Urban, Abadi Sahibjada Jhujhar Singh Avenue, Tehsil & District Amritsar, which has been purchased by the petitioner-auction purchaser, is free from all encumbrance and has not sold by the deponent to anyone else.

4. The the deponent shall not interfere in the physical

possession or in any other manner in the property in dispute.”

5. Further, it was pointed out by learned State counsel that possession of the said house is with the State in compliance with order dated 06.12.2016.

6. Today, learned counsel for the petitioner has filed an affidavit of the petitioner in Court, which is taken on record. Para 5 thereof reads thus:-

“5. That after assurances from the banks and the other parties in the present case the deponent is contented with the fact that:

- a. He is ready and willing to take the physical possession of the property purchased by him in open auction from the revenue authorities.
- b. He is also willing and ready to accept the surplus money lying with the bank as compensation towards period for which the same was under the physical possession of the borrower and he has used it.”

7. In view of the above, we dispose of the present writ petition by directing the State to deliver the physical possession of the property in dispute to the petitioner who had purchased the same in an open auction within two weeks from the date of receipt of certified copy of this order for which the petitioner shall approach the concerned authorities. It is further directed that the amount of ₹ 3,34,820/- lying surplus with the respondent-Bank in the form of FDR along with interest due thereon shall be paid to the

petitioner after encashing the FDR. However, learned counsel for respondent No. 4 has raised an objection that the said amount be paid to respondent No. 4. The said plea raised by learned counsel for respondent No. 4 cannot be accepted as respondent No. 4 inspite of the property having been auctioned had remained in possession of the same and the said surplus amount shall be treated as charges towards the use and occupation of the property by respondent No. 4 till 11.12.2016, when the possession was taken by the State.

8. Needless to say that the petitioner and respondent No. 4 shall remain bound by the statements which they have made in their respective affidavits.

**(AJAY KUMAR MITTAL)
JUDGE**

March 07, 2017
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**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No